94 40

TRANSCRIPT OF RECORD

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1939

No. 94

[redacted], PETITIONER,

vs.

[redacted] OF AMERICA

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948.

No. 98

ANDREW UPSHAW, PETITIONER

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

INDEX

"A" In the District Court of the United States
For the District of Columbia

Criminal Division

(File Endorsement Omitted)

No. 628-47

UNITED STATES OF AMERICA
vs.
ANDREW UPSHAW, DISTRICT JAIL, WASHINGTON, D. C.

Notice of Appeal
Filed August 7, 1947

Defendant was convicted of Grand Larceny by a jury on July 29, 1947 and sentenced by Justice Schweinhaut on the same day to 16 months to 4 years.

Defendant is now confined in the District Jail, Washington, D. C.

I, the above-named appealant, hereby appeal to the United States Circuit Court of Appeals for the District of Columbia from the above-stated verdict.

Dated: 8-6-47.

ANDREW UPSHAW,
Appealant,
per J. D. BLACKWELL.

JOEL D. BLACKWELL,
Attorney for Appealant,
512 5th Street, N. W.

"B" In the District Court of the United States
For the District of Columbia

Form of Clerk's Statement of Docket Entries to be Forwarded Under Rule IV

(To accompany duplicate notice of appeal to the United States Circuit Court of Appeals)

UNITED STATES OF AMERICA
vs.
ANDREW UPSHAW, CRIMINAL #628-47

1. Indictment: Grand Larceny filed June 16, 1947.
2. Arraignment: June 20, 1947.
3. Plea to indictment: Plea not guilty June 20, 1947.
5. Trial by jury: July 28, 1947.
6. Verdict or finding of guilt: Guilty as indicted July 29, 1947.

7. Judgment—(with terms of sentence): Sentenced to imprisonment for a period of Sixteen (16) months to Four (4) years (Schweinhaut, J.) entered July 29, 1947.
8. Notice of appeal filed August 7, 1947.

Date: August 8, A. D., 1947.

Attest: LILLIAN C. BROWN,
Deputy Clerk.

(Seal)

N. B.—This statement from the docket entries is intended suitably to identify the case and not as a substitute for the record on appeal, which is to be prepared and certified as provided in rules VII, VIII, and IX.

(File Endorsement Omitted)

"c" In the District Court of the United States
For the District of Columbia
(Title Omitted)
(File Endorsement Omitted)

Affidavit in Forma Pauperis
Filed August 7, 1947

Andrew Upshaw, being first duly sworn, on oath deposes and says: That he is a citizen of the United States and a resident of the District of Columbia; that he is about to appeal to the United States Circuit Court of Appeals for the District of Columbia the verdict and sentence in the above entitled case; that because of his poverty he is unable to pay the cost of such appeal or give security for the same; that he believes that he is entitled to the redress he seeks in said appeal.

WHEREFORE, he prays that he be permitted to prosecute his appeal in this case without prepayment of cost and fees.

ANDREW UPSHAW,
Appealant.

Subscribed and sworn to before me this 6th day of August, 1947.

/s/ GEORGE E. STOKES,
Notary Public, D. C.

(Seal)

Let this appeal be filed without prepayment and costs.

/s/ EDWARD M. CURRAN,
Justice.

1 In the District Court of the United States
For the District of Columbia
Criminal Division No. 1.

Filed October 8, 1947.

UNITED STATES
vs.
ANDREW UPSHAW, DEFENDANT

Criminal No. 628-47

Transcript of Proceedings

Washington, D. C.,
July 28, 1947.

The above-entitled cause came on for trial before Hon. HENRY A. SCHWEINHAUT, Associate Justice, and a jury, at 12:00 o'clock noon.

APPEARANCES

On behalf of the United States: JOHN F. BURKE, Esq.
On behalf of the defendant: JOEL D. BLACKWELL, Esq.

2 3 PROCEEDINGS

The CLERK. The case of United States vs. Andrew Upshaw, Criminal No. 628-47.

(A jury was duly impaneled and sworn.)

(Mr. Burke opened to the jury in behalf of the United States.)

(Mr. Blackwell opened to the jury in behalf of the defendant.)

Mr. BURKE. Mrs. Pearce, please.

Thereupon—

HARRIETT H. PEARCE, a witness called by the United States, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. BURKE.

Q. Will you give your name, please, Mrs. Pearce?
A. Harriett H. Pearce.
Q. Harriett H. Pearce, P-e-a-r-c-e?
A. That is right.
Q. And you reside at 4323 Seventh Street, N. W.?
A. That is right.
Q. You resided there on the first of May, is that right?
A. Yes.
Q. Of this year?

4 A. Yes.

Q. Do you know the defendant in this case, Andrew John Upshaw?

A. Only from him being in my home on that one particular day.

Q. On what occasion was he in your home?

A. He was sent there to help do some cleaning such as washing windows and work of that kind.

Q. And that was on what date?

A. On May 1.

Q. During what hours was he at your home?

A. He came there in the morning around ten o'clock and went out to lunch a little after twelve, came back around two o'clock and left around four.

Q. He was sent by whom? In other words, how did you get in touch with him to do the work?

A. Shall I state the name of the company?

Q. Yes.

A. The American Window Cleaning Company.

Q. Was there another man with him?

A. Yes.

Q. Did you have other persons do cleaning work in your house that day or other days near then?

A. No.

Q. Were there any other persons there on any other days doing housecleaning work?

5 A. No, except from that company.

Q. Except what?

A. Except from that company. The company sent five men all together.

Q. Did you at one time own this watch?

A. Yes.

Q. A Bulova wrist watch?

A. Yes.

Q. Did you own more than one?

A. No, just the one.

Q. What kind of a watch was that?

A. Well, it was a seventeen-jewel and had four diamonds, a white gold watch.

Q. And of what value was that watch?

A. $135.

Q. $135?

A. Yes.

Q. To your knowledge, when did you last possess that watch?

A. I didn't miss the watch until Saturday night. They worked in my house Thursday, Friday and Saturday and

when I went to put the watch on from the place where I had put it, it was gone.

Mr. Burke. I wonder if your Honor would take
6 judicial notice of the fact that the first of May was Thursday?

Mr. Blackwell. I have checked it, your Honor, and it is.

Mr. Burke. It is agreed that May 1st was on Thursday.

By Mr. Burke.

Q. And you say other men worked there on Friday?

A. They did.

Q. Then there were other men there, you say, on Friday?

A. And Saturday.

Q. And Saturday?

A. Yes.

Q. But not this man Upshaw?

A. No. He was only there the one day, Thursday.

Q. To your knowledge, when did you last have that watch in your possession; not when you missed it, but do you have any recollection of when you last saw it?

A. It was laying on my vanity Thursday morning when they came in to work and, seeing the watch laying on the vanity and knowing that strangers were coming in my home, I opened the drawer and dropped the watch in the drawer.

Q. The drawer of the vanity?

A. Yes.

Q. What kind of a piece of furniture is that, a low or high piece?

A. It is about the height of this (indicating). It is
7 a very heavy piece of furniture. It has a heavy mirror on it.

Q. What other objects were on it?

A. Two crystal lamps, a four-piece perfume set, a tray and, in addition, about three other bottles of perfume, and my comb and my brush.

Q. There was a considerable amount of glassware, such as bottles?

A. Yes, sir.

Q. You say you dropped the watch into the drawer of the vanity that morning?

A. Yes.

Q. When did you know that you did not have the watch?

A. The men were there Thursday, Friday and Saturday. I had no occasion to go out of the house until Saturday evening when I was going out for the evening. I opened up the drawer to get the watch to put it on and it was gone.

Q. In what part of your house did Mr. Upshaw work, if you know?

A. He had full access to any part of my house, upstairs and through the downstairs out to the back porch.

Q. To what?

A. He could go anywhere upstairs, anywhere downstairs; all the way out to the back porch.

Q. Do you have any definite knowledge that he was in your room or that he had access to all parts of the house?

8 A. He was in my bedroom, yes.

Q. That is the room where the watch was?

A. Yes.

Q. Did all the other men go into all parts of the house?

A. Yes, they could go into any part of the house they wanted.

Q. Did they do the same kind of work?

A. Yes. They cleaned the windows, cleaned the floors and washed them.

Q. You say it was on Saturday after the men left?

A. Yes.

Q. When was it that evening?

A. They left about three o'clock that afternoon.

Q. And at that time you knew your watch was gone, is that right?

A. I didn't know my watch was gone until seven o'clock that evening when I opened the drawer to get it and put it on and that is when I missed my watch.

Q. You reported it?

A. I didn't report it immediately because I was not suspicious of any of the men who worked in my home. The same company had sent men for the past four years twice a year to do this work and I had never missed anything. I searched the entire house, every drawer where it

9. could possibly be, not being suspicious that they had taken my watch, and that is why it was not reported immediately.

Q. You subsequently did report it?

A. Yes.

Q. When was that?

A. That was the following week, I would say about Wednesday or Thursday of the following week that I reported it to Police Headquarters.

Q. After the first of May, did you ever again before today see Andrew Upshaw?

A. Yes, he was brought to my home and confessed that—

Mr. BLACKWELL (interposing). I object. I object to the statement the witness is making about the defendant having been brought to her home and having confessed.

The Court. When was he brought to your home, Madam?

The Witness. He was brought there on a Saturday evening in June.

The Court. In June?

The Witness. Yes. I cannot give you the exact date that he was brought there to my home.

The Court. I will excuse the jurors now. There is some testimony I will have to take out of the presence of the jury. I will excuse you until 1:45.

(Thereupon, the jury was excused from the courtroom.)

10 The Court. What did he say, Madam?

The Witness. He told me that—

The Court. Who brought him to your home?

The Witness. He was brought to my home by a detective.

The Court. What did he say?

The Witness. He told me that when he was cleaning in the rear of my vanity that he stumbled against the vanity and it tilted forward, the drawer came open, the watch fell on the floor and that he stepped on the watch and he broke the crystal. He told me that he was going to take it down and have it repaired and bring it back and when he left my house he went down toward Georgetown and the places down there were closed.

Then he thought he would go up to 7th and Florida Avenue. He went into this cafe and he had been drinking in the men's washroom and he came out and sat down at this table and these two men and a woman came in.

He asked the men if they wanted to buy a watch. They asked him where he got the watch. He said that he had given it to a girl friend of his and that they had had an argument and that he had taken the watch back.

So one of the men asked the girl if she would like to have the watch and she said she would. He wanted to know how much he would sell it for and he told me he sold my watch for $5 and a pint of whiskey, so they im-
11 mediately bought the watch from him but he claimed that he does not know who the parties were.

The Court. All right. That will be all for the time being.

Mr. Blackwell. I want to ask some questions.

The Court. I thought you wanted to get the background of this first. Go ahead.

Mr. Blackwell. I am willing to proceed the way your Honor suggests.

The Court. All we are getting at now is the admissibility of the confession.

Mr. BLACKWELL. Are these the only questions you plan to ask, your Honor?

The COURT. That is all I plan to ask.

Mr. BLACKWELL. Very well. I will let the prosecutor proceed.

By Mr. BURKE.

Q. You say it was in the evening of the 7th of June?

A. I am not positive of the date, but it was around that time because I had to come to court the following Monday and, if I am not mistaken, I came to court when they took him in front of the Grand Jury. That date, if I am not mistaken, was the 9th of June, and he was in my home the Saturday night before the first date I came to court.

Q. Was that in the evening or afternoon?

12 A. It was in the evening between eight and nine o'clock, I would say.

Q. Were they the officers who are here today who brought him there?

A. The one officer brought him there. That is, he came in the house with him. He came up in the police car.

Q. Detective Culpepper?

A. Yes, Culpepper.

Q. You say only one officer came into the house with him?

A. That is right.

Q. At the time he was brought there by the officer, how did he appear?

A. He appeared very nonchalant about it. He seemed perfectly natural and told me the full story just exactly how it had happened. I did tell him that, "I don't see how the drawer could fall out of the vanity without an awful loud crash of all those lamps and perfume bottles on top of it."

Q. How was the story prompted? In other words, what prompted him to tell you this story at your house?

A. The detective told him to tell his story just exactly as to what had happened in regard to my watch.

Q. Did he recognize you?

A. I am sure he did.

13 Q. Did he at that time appear to be nervous?

A. No, indeed.

He seemed very calm and collected about the whole affair because he offered to pay me for the watch by paying me so much a week, you know, if I would let it go at that.

Q. He offered to repay you?

A. He offered to repay me over a certain length of time. It would take a long time to do it, but he was willing if I was willing to do that.

Q. Did he appear to be distressed in any way?

A. No way at all.

Q. Did he make any complaint to you about any treatment by the police?

A. No, none whatsoever.

Mr. Blackwell. Your Honor, I don't think that is a proper question. She wouldn't have been the one to make complaints to about the treatment of police officers.

The Court. I think it is a proper question. It will necessarily end there, but it certainly is a proper question.

Do you want to ask any questions?

Mr. Blackwell. Yes.

Cross-examination by Mr. Blackwell.

Q. Mrs. Pearce, about what time of the evening was it when the defendant was brought to your home?

14 A. It was before nine o'clock. We had finished dinner and the dishes were done. It was between eight and nine o'clock on Saturday evening.

Q. Do you recall there had been a very severe storm just before he arrived?

A. Yes, that is the truth, a very bad storm.

Q. He reported to your home during a very severe storm?

A. No, the storm wasn't going on at the time.

Q. He was brought after the storm had subsided?

A. I couldn't say whether it was before or after, but I am almost sure of the time because we were supposed to go out for the evening and I had cancelled my engagement for the evening and that is why I am sure.

Q. Did you cancel your engagement because of the storm?

A. No, because I knew he was coming up there.

Q. You don't know whether the storm occurred prior or after he came?

A. I am not positive. As near as I can recall, I think the storm was after he came, the worst part of it, that is, in the section of the city that I live in.

Q. Who brought the defendant in to you?

A. He was brought there by Detective Culpepper.

Q. What did he do when he entered your home? Did he go in and take a seat?

15 A. No, he did not. He conducted himself very well, as he had conducted himself in my presence in my home at the time when he was there. He was very considerate and I was very surprised that he admitted to the theft of my watch.

Q. He was under arrest, I take it?

A. Yes, he was under arrest. He came up in a police car.

Q. How close did Sergeant Culpepper stand to him?

A. Not particularly close. I would say he was not any closer than to that bench to Upshaw.

Q. Where, in your living room?

A. I was in the living room.

Q. But he did not take a seat?

A. No, he did not. Neither one of them, the detective nor Upshaw.

Q. Did they ask you to come to the precinct station?

A. I beg your pardon?

Q. Did they ask you to come to the precinct station?

A. No, they did not.

Q. Do you know when he was arrested?

A. Well, I think he was arrested on Friday. I am not sure of the time that he was arrested. I don't know that.

Q. You think he was arrested on Friday?

A. As far as I know, either Thursday night or Friday. I am not sure of that.

16 Q. When did they report to you they would bring him out?

A. Saturday.

Q. Did they call you and tell you he was coming out to confess prior to his arrival?

A. They told me—I think it was Saturday morning and they called me and said he had confessed to stealing my watch.

Q. And they wanted to bring him out and have him confess to you?

A. Yes, that is right.

Q. Of course, you have already testified he made no complaint to you about having been beaten and forced by the police officers to make a statement to you to the effect he had taken your watch?

A. No, he seemed at the time that he was very sorry it had happened.

Q. This was around nine o'clock Saturday evening?

A. Yes.

Q. What date was that?

A. I say it must have been the seventh because my first time in court was on the ninth of June and it was the following Monday.

Mr. Blackwell. Very well.

The Court. That is all.

17 (Witness temporarily excused.)

Mr. Burke. Call Officer Culpepper, please.

Thereupon—

VERNON CULPEPPER was called as a witness for and on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

The COURT. Is this the arresting officer?

Mr. BURKE. I think so.

The COURT. Will you step back there, Mr. Culpepper, a moment?

The WITNESS. Yes.

The COURT. It seems to me there is no need to prolong this preliminary hearing.

Is this boy going to say he was beaten?

Mr. BLACKWELL. Yes, sir, very much so, your Honor.

The COURT. All right. And your people are going to deny it?

Mr. BURKE. Your Honor, I have not prepared this case.

The COURT. I know you are at a disadvantage, but that is unavoidable some of the time and this is one of the times. You can ask each one of the officers. Go out and ask if either one of them beat him.

Mr. BLACKWELL. He says both of them beat him, Culpepper and Furr.

18 The COURT. If they deny it, I am going to submit this to the jury.

Mr. BLACKWELL. I would like to show the length of time from the arrest and the time of the confession.

The COURT. I want it limited now to that one question, when was he arrested and—that is about all.

Direct Examination by Mr. BURKE.

Q. Your name, sir, is Vernon Culpepper, of the 10th Precinct, a detective?

A. That is right, sir.

Q. Did you arrest the defendant personally?

A. Yes, sir.

Q. Personally, or cause his arrest?

A. I arrested him personally.

Q. That was at what hour and on what day?

A. It was approximately 2 a. m. on the sixth of June.

Q. Was that arrest made in connection with this charge, the complaint of Mrs. Pearce?

A. Yes, sir.

Q. Or for any other reason?

A. No, sir.

The COURT. For this case?

The WITNESS. Yes, sir.

The COURT. That is the sixth of June, Thursday

19 night, or early Friday morning?

The WITNESS. Early Friday morning, yes, sir.

By Mr. Burke.

Q. After you arrested him, did you take him to the 10th Precinct?

A. Yes, sir, I did.

Q. Did you at that time question him?

A. Yes, sir, I did.

Q. How long did you question him at that time?

A. I would say approximately—frankly, I don't know. It wasn't very long, not over half an hour at the most.

Q. What time did you go off duty? Were you on midnight duty at that time?

A. No, sir. I was supposed to go off at two o'clock.

Q. In the morning?

A. Yes, sir.

Q. And you continued on duty for the purpose of questioning this man?

A. Yes, sir, that is right.

Q. After you questioned him, did you leave him at the 10th Precinct?

A. Yes, sir.

Q. Did you later question him again?

A. Yes, sir.

Q. What time was that?

20 A. I questioned him the following morning, the same morning, around eleven o'clock, I believe it was.

Q. Was anyone else assisting you in the investigation of this case?

A. Yes, Detective Furr.

Q. At eleven o'clock, how long did you question this man?

A. If I recall correctly, I didn't even take him out of the cell block at eleven o'clock. I went back and talked to him through the bars.

Q. Did you at any later time question him?

A. Yes, sir.

Q. When was that?

A. I questioned him the same evening. That would be Friday evening. I questioned him about five-thirty. I talked to him through the bars again.

Q. Did this man ever make any statement to you admitting his guilt of this theft?

A. Yes, he did.

Q. When was the hour when he first made that admission to you?

A. That was about two p. m. on Saturday, June 7.

The Court. On Saturday?

The Witness. Yes.

The Court. He denied it up to then?

21 The Witness. No, sir, he denied it,—I can only say that he denied it up until about five-thirty on Friday.

The Court. What do you mean by that?

The Witness. Well, it is like this, your Honor: I didn't question him Saturday morning, but he was questioned Saturday morning, but I was not there and at that time he did admit taking the watch, but I wasn't there.

The Court. To some other officer?

The Witness. Yes, that is right.

The Court. That was Friday?

The Witness. No, sir, that was Saturday about nine o'clock or nine-thirty.

The Court. In the morning?

The Witness. Yes. I read a statement that he signed at that time and at two o'clock I read the statement to him and it was typed at nine-thirty and he identified that statement to me at that time as having been the statement that he voluntarily gave to Detective Furr.

By Mr. Burke.

Q. Detective Furr?

A. Yes, sir.

Q. Is that this statement dated June 7, 1947?

A. Yes, that is correct.

Q. Signed by you also?

A. Yes, sir.

22 Q. When did you sign it?

A. I signed it about two p. m. after I had him read it and identify it to me.

The Court. I am going to adjourn now for the luncheon recess.

(Thereupon, at 12:25 o'clock p. m., a recess was taken until 1:45 o'clock p. m. of the same day.)

Afternoon Session

(The trial was resumed at 1:45 o'clock p. m., pursuant to the recess.)

Mr. Burke. Mr. Culpepper.

Thereupon—

Vernon Culpepper resumed the stand and testified further as follows:

Direct Examination—Resumed.

By Mr. Burke:

Q. You say you examined the man again in the afternoon about five o'clock?

A. Between five and six, I am sure.

Mr. Blackwell. What date is this?

By Mr. Burke:

Q. On Friday, the sixth of June?

A. Yes, sir.

Q. Was any other officer with you at that time?

23 A. I don't believe so.

Q. Was the other officer assisting you in the investigation on Friday?

A. I don't understand the question.

Q. Was the other officer helping you to investigate this case on Friday? In other words, did he question the defendant too?

A. If I might explain—I was working separate hours from Mr. Furr, so, consequently, I don't know if he talked to him when I wasn't there or not.

I was going to work at six in the evening and working until two a. m. in the morning. I do know I came down at eleven o'clock on Friday, sometime before noon, and talked to the defendant. I also know when I came back to work at six I came early and talked to him at that time.

Q. Had you investigated the other men who had worked at the house?

A. Yes, I had.

Q. Why did it take so long to get around to investigating Upshaw?

A. Well, there were several reasons. One reason is it was not reported to us until late after it had happened.

The Court. What was not reported?

The Witness. The theft. It was not reported to us promptly.

24 The Court. When was it reported?

The Witness. I don't know whether I can tell you the actual date. It must have been two weeks anyway before Upshaw was located up at Lorton.

The Court. Wait a minute. When the theft was reported to you, Upshaw was also serving time for something else?

The Witness. Yes, for something else, Your Honor.

By Mr. Burke.

Q. At the time you picked him up about two o'clock on the sixth of June, what was his physical condition?

A. Well, he was coughing continuously. He was spitting and he said he had something in his throat and he couldn't talk and he was gagged half the time, but we were able to question him, but if we would ask him a question he would cough three or four minutes before he would answer.

As to his sobriety, I was not sure whether he was drunk or sober.

Q. In other words, did anything about his condition interfere with your free questioning of him?

A. At that time, yes.

Q. How long did that condition continue?

A. That I don't know. I left about two-thirty, I would say; around the neighborhood of two-thirty a. m., or perhaps a little later.

Q. When you returned, you say about eleven o'clock?

A. It was in the morning, before noon, yes, sir.

25 Q. Did that condition persist at that time?

A. No, sir, it did not.

Q. The coughing?

A. Not to excess. He did cough some and he did spit some, but not to interfere with the questioning.

Q. At that time it was possible to converse freely with him?

A. Yes, it was.

Q. On Saturday, you talked with him about eleven o'clock at which time he confirmed the written statement?

A. About two p. m.

Q. Then you took him out to Mrs. Pearce's house at what time?

A. That evening about nine p. m.

Mr. BURKE. You may examine.

Cross-examination by Mr. BLACKWELL.

Q. As I understand it, Officer, when you arrested this man at two o'clock in the early morning of June 6th, he was coughing continuously, is that it?

A. Not continuously, no, sir. By that I mean to say we were able to question him some but he said that he could not talk without coughing and he said he had bronchial trouble.

Q. Was he intoxicated?

26 A. I don't know.

Q. Did you book him for intoxication?

A. No, sir, we did not.

Q. Did you ask him if he wanted a doctor?

A. No, sir, I did not.

Q. Did you suspect he was ill?

A. No, sir.

Q. Then the reason you didn't continue to question him was not because you thought he was ill?

A. No, sir.

Q. There came a time when he confessed to you, is that right?

A. Yes, sir.
Q. When was that?
A. About two p. m. on Saturday, June .
Q. Did you take him to the Police Court across the street on Friday morning and place a charge against him?
A. No, sir.
Q. Did you do so Saturday morning?
A. No, sir.
Q. Why didn't you?
A. We didn't have anything to take him to the Police Court with.
The COURT. I don't hear you.
The WITNESS. Because I didn't feel that we had a
27 sufficient case against him to have the Police Court hold him, and if the Police Court did hold him we would lose custody of him and I no longer would be able to question him.

By Mr. BLACKWELL.

Q. So up to midday Saturday, you did not think you had a sufficient case to hold him?
A. I legally didn't think the Court would hold him.
Q. That was the reason you didn't bring him to Court Friday morning?
A. Mostly.
Q. And Saturday morning?
A. That is right.
Q. There came a time Saturday night when you decided to take him to Mrs. Pearce's home?
A. That is right.
Q. Before you did that, though, you told him you would take him out and tie him to a car and drag him to his death, did you not?
The COURT. What was that?

By Mr. BLACKWELL.

Q. Before you left, you didn't tell the defendant where you were going to take him, did you?
A. Yes, I did.
Q. Isn't it a fact you told him you were going to take him out and tie him to a car and drag him to his death?
28 Answer my question yes or no.
The WITNESS. Do I have to answer, your Honor?
The COURT. Yes.
The WITNESS. No.

By Mr. BLACKWELL.

Q. So I take it you don't want to answer the question.

The Court. He has answered it "No".

The Witness. I think it is absurd to ask that question.

By Mr. Blackwell.

Q. Do you deny that you beat this defendant into confessing?

A. I do deny it.

Q. Isn't the reason you didn't place a charge—

A. (Interposing) I did place a charge against him.

Q. Is it a fact that he confessed to you on Saturday and you informed him that you doubted his confession?

A. I doubted some parts of it.

Q. You said you doubted some of his confession, did you not?

A. That is right. I still do.

Q. You continued to beat him, did you not?

A. I have never beat him at all.

Q. On your way to Mrs. Pearce's house, there came a storm, did there not?

A. That is right.

29 Q. Did you go directly to her home in the storm or was it so severe you pulled to the side and stopped?

A. We stopped.

Q. Isn't it a fact you told him if he didn't go in there and confess what would happen to him when you came out?

A. No, sir, that is not so.

Q. You deny that you said you would kill him?

A. I deny that.

Q. What was the nature of the conversation with the defendant while the storm was in progress when you pulled your car over to the curb and stopped?

A. I don't believe I had any conversation with the defendant.

The Court. Let me interrupt, Mr. Blackwell, to ask this: So far as you know, did any police officer beat him?

The Witness. No, sir.

The Court. Bring in Officer Furr. There is no point in taking the time before me because it is rather obvious to me now that this is a fact that should be submitted to the jury and not decided by me. In view of your statement that the defendant is going to contend that he was beaten and this officer says he was not, I want to hear from the other officer and if he denies it, there is only one thing to do and that is submit it to the jury.

(Witness temporarily excused.)

30 Thereupon—

LLOYD FURR, was called as a witness for and on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. BURKE.

Q. Your name is Lloyd Furr of the 10th Precinct, a detective?

A. That is right.

Q. And you assisted in the investigation of the case of Andrew Upshaw on the complaint of Mrs. Pearce?

A. I did.

Q. When did you first have any concern with the defendant in this case?

A. It was around two o'clock on the morning of the sixth.

Q. Were you present at the time of his arrest?

A. I was.

Q. What part did you take in his arrest?

A. I assisted Mr. Culpepper and I questioned him. I was present during the questioning for about half an hour or twenty-five minutes after his arrest.

Q. At a later time did you question him again?

A. I questioned him again the following morning
31 after I came in somewhere in the neighborhood of nine or ten o'clock.

Q. At that time did he make a statement to you?

A. No, he denied it. That was on the morning of the sixth. He still denied having any knowledge of it.

Q. On the sixth, did you question him again?

A. Later that night, after having roll call, at probably seven-thirty to eight.

Q. At that time—

A. (Interposing) He still denied any knowledge of it.

Q. Did you further question him at a later time?

A. Yes. The following morning, the morning of the seventh, he made a statement to me. He admitted to me about nine o'clock, and he gave a statement at nine-thirty.

The COURT. That is all I want to hear. You can pursue it at such length as you wish before the jury.

You may retire.

(Witness temporarily excused.)

The COURT. I would like to hear from you gentlemen on the question of time.

day?

Mr. BLACKWELL. Would you like to hear from the defendant as to whether he was beaten or not?

The Court. No. He would present a question of fact which I would not resolve. It is for the jury to resolve. I am interested on the question of law as to the time of his arrest and the time of his arraignment.

32 Mr. Blackwell. Very well, your Honor.

If your Honor please, I take the position that this confession is not admissible in evidence inasmuch as this man's legal rights were involved in that the police officer held him an unreasonable time in order to get the alleged confession. He was arrested at two o'clock on Friday morning, charged with a felony. They had an opportunity to bring him into court, as they were supposed to do, or take him before a United States Commissioner Friday morning. They failed to do that. They continued to question him.

They questioned him Saturday morning. They had an opportunity again to bring him before a police magistrate or commissioner. They failed to do that.

After that, the officers got a confession, and after they were supposed to get a confession they took him to the home of the complaining witness in the course of one of the most severe storms of the season under the threat that if he did not confess to the complaining witness they would do something to him.

Of course, we realize it is unusual to take the man to the home of the complaining witness, to start with. However, this is a different case—

The Court. That is not an infrequent thing. I have heard of it time and again in this court room.

Mr. Blackwell. Very well, your Honor. The fact
33 is, the confession which Mrs. Pearce, the complaining witness, was about to testify to was gotten around nine o'clock on the night of June 8.

The Court. June 7th. You mean when he went to Mrs. Pearce's home?

Mr. Blackwell. Saturday, June 8.

The Court. June 7.

Mr. Blackwell. He was arrested on Friday morning at two o'clock. He was held on that day, Friday night and all day Saturday without bringing him into court and then, at nine o'clock at night in the course of a storm, they take him to the complaining witness under threat of violence, and then he made a confession to her which she herself doubted because she said it was almost impossible for a drawer to fall on the floor and she not hear it fall.

The officers have testified they doubted his confession and we submit this confession should not be admitted in evidence.

The Court. I am really concerned only with the time element, Mr. Burke. I will hear from you on that. The rest of it presents clearly a factual issue.

Mr. Burke. The time element which preceded the making of the statement, we say, was one which was occasioned by usual police procedure and one which was not made under aggravating circumstances but was the usual police procedure of questioning a suspect and that, under the new rules, of course, the taking of a prisoner to the committing magistrate may not be immediate but must be without unnecessary delay. Delay is not unnecessary which permits the usual police procedure, and it seems to me it is reasonable to keep a man—certainly at first the man could not talk very coherently and after that they questioned him—they only held him one day for the purpose of questioning him. I do not believe that exceeds the bounds of reasonableness as those tests have been applied recently.

It was pointed out in the Boone case that the Akowsky case does not mean what some people say it means. Some people would say it means that any detention is unreasonable, but Justice Laws pointed out that questioning is not unreasonable, because, in the first place, it gives the officer an opportunity to find out what the defendant's story is and then to check it, if possible.

The Court. Do you have Justice Laws' opinion in the Boone case?

Mr. Burke. Yes, I have it here.

The Court. Yes, I know the case. Why, Mr. Blackwell, doesn't this fit almost squarely with Justice Laws' views?

Mr. Blackwell. I don't think it does, your Honor. This man was questioned, I would say, thirty-six hours, roughly speaking, before he confessed and then the officer—

The Court. It was continuous questioning, though.

Mr. Blackwell. He was questioned by various officers, your Honor, at different times. It wasn't just continuous questioning but he was questioned by different officers and he claims that he was beaten during the course of that questioning and there was every opportunity for the officers to bring this man into court.

The alleged crime had been committed more than a month previously and this man had been in jail.

The Court. He was not in jail on this case.

Mr. Blackwell. But if they had decided to question him, they could have questioned him at the D. C. Jail. He was serving a term for being intoxicated and they had ten days before this man was locked up. They said something about this man spoke incoherently.

The COURT. They said what?

Mr. BLACKWELL. Officer Culpepper said the man spoke incoherently at the time he was arrested. The records will show that no inquiry was made as to whether or not he needed a doctor, so, we will take it for granted, they did not assume this man was ill and they did not book him for intoxication. In fact, Officer Culpepper does not say he was intoxicated.

They took him to the home of Mrs. Pearce and had him confess, figuratively speaking, at the point of a gun because the officer was right there. Although Mrs.
36 Pearce said she did not believe his story—

The COURT. She did not say she did not believe it but the substance of it was she was surprised because he acted so nicely. It seems to me that Judge Laws' opinion, expressed in the Boone case, covers this.

Mr. BLACKWELL. You mean Judge Laws' opinion supersedes the McNab case?

The COURT. No, the McNab case has been construed by the Supreme Court since then.

Mr. BLACKWELL. What about the Akowsky case, your Honor?

The COURT. Judge Laws distinguishes that from the Boone case. The facts are sufficiently similar to the facts in the Boone case, so I will permit the jury to take the case and I will hear you again at the conclusion of all the evidence.

Mr. BLACKWELL. Very well, your Honor.

(Thereupon, at 2:20 o'clock p. m., the jury returned to their places in the jury box.)

Thereupon—

HARRIETT H. PEARCE resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. BURKE.

Q. Mrs. Pearce, you said on a subsequent day you saw the defendant in your own home again?

37 A. That Saturday he was there.

Q. On a Saturday?

A. Yes.

Q. You fixed the date of that by some way as to what

A. No, I know it was the last day that they came there to work.

The COURT. She said it was June 7 and she arrived at that by reason of the fact she went to court on June 9.

The WITNESS. That is right.

By Mr. Burke.

Q. Saturday, June 7, he came to your house and he was brought to your house by an officer?

A. That is right.

Q. Was that Officer Culpepper?

A. Officer Culpepper.

Q. At the time he was brought there, what was his appearance at that time?

A. He was very calm and cool and collected.

Q. What occurred at that time in your presence?

A. Well, he just told—Culpepper told him to tell me the story about my watch.

Q. What did he tell you then?

A. Do you want me to repeat the entire story again?

Q. Yes, what Mr. Upshaw told you.

38 A. He told me that when he was working up in my bedroom in back of the vanity that he stumbled and the vanity started to go forward and he rushed around front to grab these crystal lamps, and that when he did, the drawer of my vanity came out and the watch fell on the floor and he stepped on the watch and broke it.

He immediately decided to take the watch and have it repaired. He described to me how he went into the bathroom and took toilet tissue and wrapped it around the watch and put it in his pocket.

He told me he went to Georgetown in order to pick up some stuff there and he decided to get the watch fixed but the places were closed. So he got on the street car, or I don't know what transportation he used to go to this cafe at Seventh and Georgia Avenue. He said he had been drinking.

Then he went to the men's room and when he came back these two men and one woman came in. He got to talking to them and he asked them if they would like to buy this watch, so they questioned him in regard to the watch and he told them the crystal was broken and they wanted to know where he got the watch.

He said he had given the watch to his girl and they had had a break-up and he took the watch back. To use his exact words that Upshaw said to me, one of the men said to the woman, "Baby, would you like to have a watch?"

39 So he showed her the watch and the men paid him $5 and a pint of whiskey for my watch, and he also offered if I didn't—he didn't say "prosecute" the case, but he said if I would let the case go he would pay me for my watch.

I told him it wasn't so much the value of the watch but there were some things money could not replace which, in this case, was my watch.

Q. That was told to you in your home?

A. In my home.

Q. By Upshaw?

A. By Upshaw, in the presence of Culpepper and also in the presence of my husband.

Q. Did he say whether he would recognize, or if he knew who these people were?

A. He said he had no idea. He didn't know the people; that he could not identify them because he was drunk at the time that he sold my watch.

Q. Did he identify the place that he said that he met these people?

A. Not to me, he didn't. He just told me it was at Seventh and Florida Avenue.

Q. And I take it you have never recovered your watch?

A. I have not.

40 Mr. BURKE. You may examine.

Cross-Examination by Mr. BLACKWELL.

Q. Mrs. Pearce, when did you say the defendant, Upshaw, came to work for you?

A. He came to my house on the first day of May, Thursday, at ten o'clock.

Q. Did he return the following day?

A. He went out to lunch around noontime, around twelve o'clock, and came back to my home about two.

Q. Did he come back on the second day of May to work for you?

A. No, he did not.

Q. Did anyone from that place come back?

A. Yes, they did.

Q. Did anyone work for you on Saturday?

A. Yes, the same company. The man who came with Upshaw came back on Friday with a strange man and he came back on Saturday with two other men.

Q. There were two men working all day on May 1, is that right?

A. That is right.

Q. Including Upshaw?

A. No, Upshaw and one other man.

Q. I said two, including Upshaw?

A. Yes.

41 Q. And on Friday there were two men?

A. Yes.

Q. Upshaw was not there?

A. He was not there, no.

Q. And on Saturday, there were three men?

A. That is right.

Q. Was Upshaw there on Saturday?

A. No, he was not.

Q. When did you say you missed your watch, Mrs. Pearce?

A. I missed my watch on Saturday night, the third of May, Saturday night.

Q. Did you immediately call the police department?

A. No, I did not.

Q. When did you call the police department and make a report that your watch was missing?

A. I can't give you the exact date because I don't know. I wanted to make sure that no one had stolen my watch. I didn't want to accuse anyone of stealing it until I was sure.

Q. Do you have any servants in your home?

A. No, I do not.

Q. Do you have anyone living there besides your husband?

A. I have one girl, my cousin.

Q. Give us some idea as to how long after you missed the watch that you made a report to the police department.

42 A. I told my husband about it. He happens to be on the police force himself. He couldn't do anything about it because it was not his precinct.

Q. When did you tell him about it?

A. I told him about it immediately.

Q. You mean Saturday night?

A. Yes.

Q. Approximately how long after that was it that you made a report to the police department that your watch was missing? Would you say a week or two weeks?

A. I could tell you exactly. It wasn't the following Tuesday. It went from that Saturday night, not that Tuesday but the following Tuesday. You can figure that date. I cannot.

Q. When did the men complete the housecleaning or window cleaning that they were doing for you?

A. I beg pardon?

Q. When did the men who came up from the American Cleaning Company complete the cleaning?

A. They completed it Saturday afternoon. They left my house at three o'clock, May 3.

Q. And the job was completed then?

A. Yes.

Q. After you missed your watch on Saturday, did you contact the manager of the cleaning concern and
43 make a report that you missed your watch?

A. My husband did.

Q. Your husband did?

A. Yes.

Q. What was their reply?

Mr. BURKE. I object to hearsay evidence like that.

The COURT. I sustain the objection to that question. Don't tell us what they replied, Mrs. Pearce.

Mr. BLACKWELL. I take it I will be permitted to ask her whether or not she had a conversation subsequent to that. After her husband made a report to them, did she have a subsequent conversation with them?

The COURT. You can ask her, but what the conversation was, I think, is incompetent.

Mr. BLACKWELL. Very well, your Honor.

The COURT. The fact that she reported it is all right, but beyond that I do not believe it is competent.

By Mr. BLACKWELL.

Q. Your husband made a report to the company concerning a watch having been stolen?

A. Yes.

Q. Did you give a description of that watch?

A. I don't know what took place in the conversation with my husband with the company other than the fact that they told him that Upshaw had not reported to work since
44 the day he was at my home.

Q. Did you get Upshaw's name when he worked for you?

A. When he came to my house to work for me?

Q. Yes.

A. No, I did not.

Q. When did you first see Upshaw after May first?

A. The Saturday night that he came to my home to tell me about it.

Q. You had not seen him from May 1 to June 7?

A. That is right.

Q. What time did they leave on May 1?

A. On May 1 they left there in the afternoon. It was near four o'clock. It may have been quarter to four.

Q. Do you recall his asking you the time when he left that day?

A. Beg pardon?

Q. Do you remember he asked you the time of day that day when he left?

A. I am not sure as to any conversation I had with him as to what time it was. I think they did mention the time because the owners of the place had called them to stop by for some other business in Georgetown.

Q. Was Upshaw the only one of the workers who had access to your bedroom?

A. They all had access to my bedroom, everyone of them.

45 Q. When you went to your bedroom on Thursday night, did you notice anything unusual about your dresser?

A. Nothing.

Q. Nothing seemed to be disturbed?

A. No.

Q. Did I understand you to say, that you took your watch off the dresser because the men were coming to work there?

A. It was lying on the vanity when I took it off my arm and I saw it there and I put it into the drawer.

Q. What was the purpose of doing that?

A. Because I thought it was best to put away anything like that.

Q. After these men had cleaned your room, did you look in the drawer to see if your watch was there?

A. No.

Q. Did you look any time Friday to see if it was there?

A. No, I did not.

Q. Did you look Friday?

A. No, I don't wear it around the house. They were there Thursday, Friday and Saturday and the first occasion I had to put my watch on was when I was ready to go out Saturday night and that was when I missed it.

Q. How long had you had that watch, Mrs. Pearce?

A. I think it was in '44.

46 Q. What did you pay for it?

A. $135.

Q. You paid $135?

A. Yes.

Q. What value did you place on it when you reported it lost to the police department?

A. $135.

Q. So you take the position it has not depreciated in value from 1943 to 1947?

A. Depreciated? No, it has raised in price. It is about twice that price now.

Q. When the defendant came to your house that night, when he was brought there by Officer Culpepper, what was his condition?

A. He seemed to be in a very good condition and he didn't seem to be overly concerned about the fact that he had stolen the watch because he wanted to replace it by working, and he seemed very calm.

The Court. Wanted to replace it by what?

The Witness. By working; that if he would work and pay the money back to me.

By Mr. Blackwell.

Q. He was coughing a good bit that night, was he?

A. If I remember, he didn't cough once when he was in my house.

47 Q. He was perfectly sober?

A. Cold sober.

Q. He didn't seem to be ill or anything?

A. No, not in my house.

Q. Did I understand you to testify that there was a considerable amount of glassware on your dresser?

A. Yes.

Q. Was any of the glassware broken?

A. Nothing had been broken. As far as I was concerned, I mean nothing on the bureau looked as though it had been touched.

Q. By the way, when they were working, what place in the house were you?

A. I was downstairs most of the time.

Q. If the bureau drawer had fallen out, would you have heard it?

A. Of course, I would, and, if you will permit me to say, Upshaw will know why I stayed downstairs. I explained to Upshaw I wasn't able to go up and down the steps because I had just come out of the hospital and that is why I was downstairs.

Q. If that bureau had been tilted, some of the glassware would have fallen off the dresser, when the drawer fell out, would it not?

A. That is right.

48 Q. And had it fallen, it would have broken?

A. Yes.

Mr. Blackwell. That is all.

Re-direct Examination by Mr. Burke.

Q. Mrs. Pearce, did you say you reported the loss of the watch the next week or the next Tuesday a week?

A. It must have been the next Tuesday a week, because I wanted to make sure I had not misplaced the watch before I made any complaint about it.

Mr. Burke. That is all.

Mr. Blackwell. Are you sure now you didn't misplace the watch?

The WITNESS. I am positive of it.
Mr. BLACKWELL. You are sure it has been taken away?
The WITNESS. Yes.
Mr. BURKE. That is all.
(Witness excused.)

Thereupon—

LLOYD FURR, was recalled as a witness for and on behalf of the United States, and having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination by Mr. BURKE.

Q. Your name, sir, is Lloyd Furr, Detective of the 10th Metropolitan Police Precinct, District of Columbia?
A. That is correct.
Q. Did you participate in the investigation of the complaint of Mrs. Harriett Pearce regarding the theft of a watch?
A. I did.
Q. And in connection with that investigation, did you have contact with the defendant, Andrew John Upshaw?
A. I did.
Q. Where did you find him?
A. I was present at the time of the arrest. I don't recall the address. I have it if I can refer to my notes. I believe it was 1533 8th Street, N. W.
Q. At what time?
A. Approximately two-thirty a. m., June 6.
Q. At that time, did you ask him if he knew anything about the theft and the complaint?
A. We did after we arrived back at the precinct.
Q. Did he tell you whether he worked there?
A. Yes, he admitted he worked there. He had happened to clean the house or something.
Q. Did he say whether he had any knowledge of the loss of the watch?
A. He said he knew nothing about it whatsoever at that time.
Q. At any subsequent time, did he state anything differently to you?
A. Yes. The following morning about nine o'clock or shortly thereafter, after I arrived at work, he admitted to me that he had taken the watch and that he had, while working, I believe, in the bedroom, tipped over the dresser and the watch had fallen on the floor and, in trying to catch the dresser, he stepped on it and had broken the crystal.
He said he put the watch in his pocket and was going

o take it down the street to have it repaired. He thought here might be a chance or a possibility of returning it repaired and they wouldn't know he had broken it.

However, by the time he got down the street to the office nd borrowed money, all the jewelry shops had closed. Then he went to Seventh and T Street, N. W., to eat. He ccupied a booth there and a couple of minutes later two ien and a woman sat with him at which time he showed iem the watch and asked them if they would like to buy it. He said it was a watch that belonged to his girl friend iat he had broken off with. They asked him how much it as and he said he would take $5 and a pint of whiskey, at which time one fellow left the restaurant and came back with a pint of whiskey and between them they had a few drinks and then gave him a $5 bill.

He described the watch as being a small, lady's watch. e said at the time he came to them it was still running ut the crystal was broken.

Q. Did you have an occasion, then, to go to the house of rs. Pearce?

A. No, I did not.

Q. Did you cause this statement of his to be reduced to riting?

A. Yes. He signed his statement about nine-thirty the me morning, that is, on the 7th.

Q. How was that reduced to writing by you?

A. Typed by me.

Q. How was it typed, in the exact words or was what he id changed?

A. As near as possible, his exact words were typed as the address and where he sold it and so forth.

Q. Can you identify this paper writing?

A. I can. That is the statement.

Q. Did you say that he said something about tipping e drawer of the bureau?

A. He said he was trying to move the dresser and that it had tipped over and when he caught it, the watch fell on the floor.

Mr. Burke. I would like to have this marked overnment's Exhibit No. 1.

(The written confession referred to was marked Government's Exhibit No. 1 for identification.)

By Mr. Burke.

Q. What opportunity was he given to read this before signed it?

A. I asked if he could read and write and he told me could and he spent probably ten or fifteen minutes reading it before he signed it.

Q. Did he make any corrections or suggest any changes in it as it was typed?

A. None whatsoever.

Mr. BURKE. I offer Exhibit 1 in evidence.

Mr. BLACKWELL. If your Honor please, I object.

The COURT. On what ground?

Mr. BLACKWELL. On the ground as heretofore stated, your Honor.

The COURT. I will have to give it to the jury and then it will be up to the jury, under my instructions at the end of the case, to decide whether they will consider it. They have to consider the factual questions that have been presented by you.

53 Mr. BLACKWELL. Very well.

Mr. BURKE. I am reading Government's Exhibit No. 1.

(Thereupon, Government's Exhibit No. 1 was read to the jury by Mr. Burke.)

(Government's Exhibit No. 1 was received in evidence.)

By Mr. BURKE.

Q. Did he give any further description of the watch than that?

A. No, not to me.

Q. What is in this statement, you say, is the way he said it?

A. That is right.

Q. In other words, did you ask him to say it a certain way or did you take it down as he said it?

A. I took it down as he told me it happened.

Mr. BURKE. You may examine.

Cross-examination by Mr. BLACKWELL.

Q. Officer, when did you arrest this man?

A. Around two o'clock on June 6.

Q. Who was present?

A. Culpepper and myself.

Q. Anyone else?

Q. I believe a couple of uniformed men whose names I don't recall.

Q. You don't know their names?

54 A. I don't recall.

Q. Was he intoxicated at the time you arrested him?

A. I would say he probably had been drinking. I would say he had been drinking.

Q. You know an intoxicated man when you see him, do you not?

A. I do.

Q. Was this man intoxicated at the time of his arrest?
A. He had been drinking.
Q. I take it by that you mean that he was not intoxicated, is that correct? I didn't ask you if he had been drinking. I asked you whether or not, in your opinion, having observed a number of intoxicated men as a member of the Police Department, whether or not this man was intoxicated at the time of his arrest. Was he or was he not, Officer?
A. He had been drinking. That is my answer.
The Court. Is that the best answer you can give?
The Witness. I wouldn't say he was drunk.
The Court. That is what he is asking. He is asking you your opinion as to whether he was drunk when you arrested him.
The Witness. If I understand the definition of drunk, your Honor, a man no longer is capable of taking care of himself, he is down and out.
The Court. Was he under the influence?
The Witness. He was under the influence.
55 By Mr. Blackwell.
Q. Did you smell whisky on his breath?
A. That is right.
Q. Was he coughing?
A. He was coughing on the way to the precinct.
Q. He didn't seem to be ill?
A. No, except he might have told me he had a cold or something.
Q. Pardon?
A. He said he had a cold.
Q. How long did that condition last?
A. All the way to the precinct and even after we had left—I mean from the time we were talking to him, which was about half an hour, I guess, after we got back to the precinct.
Q. What time did you get to the precinct?
A. Shortly after two o'clock.
Q. Then that condition was over?
A. No, I didn't say that. I said he was still coughing when we left.
Q. Did that condition persist until you took him to Police Court Monday?
A. I wouldn't say. I didn't observe him.
Q. Did that last on Saturday?
A. I didn't notice on Saturday.
56 The Court. There may be a question of what you said when he asked you about Saturday.
The Witness. On Saturday morning is when I took the statement.

The COURT. What was his condition then?

The WITNESS. He was coughing a little bit, not to the extent he was on Friday.

By Mr. BLACKWELL.

Q. Was Culpepper present when he made this statement?

A. He was not.

Q. Culpepper witnessed the statement, did he not?

A. Not while I was in the room.

Q. When did he put his name on there as witnessing the signature?

A. I have no knowledge of that.

Q. That was out of your presence?

A. Yes.

Q. You signed the statement on one occasion and then Officer Culpepper came along on a subsequent occasion and signed it?

A. If he signed it, yes.

Q. Isn't it a fact, Officer, that you wrote this statement and insisted that this man sign it at the point of force and violence?

A. No, I did not.

Q. Do you deny beating this man?

A. I do.

Q. Do you deny having used mittens on your hands and having beaten him then?

A. I do.

Q. That was all of his own free will, is that your testimony?

A. That is correct.

Q. Did you believe what he said in that confession, or did you have any reason to doubt it?

A. I had no reason to disbelieve it.

Q. You believe that confession?

A. That is correct.

Q. You got that confession at nine-thirty Saturday morning. If you believed that confession why didn't you take him to court?

A. It wasn't for me. It was Mr. Culpepper's case. I was assisting Mr. Culpepper.

Q. Pardon me?

A. I was assisting Mr. Culpepper.

Q. But you were the one who obtained the confession from him?

A. That is correct.

Q. And you got that confession at nine-thirty Saturday morning?

A. That is right.

Q. You didn't doubt what he said in that confession? fession?

A. Right.

Q. Yet you didn't bring him before court that morning?

A. I did not.

Q. Do you know whether he was brought before court that morning?

A. I don't know.

Q. When did you first see Mr. Culpepper after the defendant signed that statement?

A. I left the statement in Mr. Culpepper's box and that is the last I knew about the case until we came to the court the second time. I mean I didn't follow the case after I took the statement.

Q. You don't know whether or not Mr. Culpepper talked to the defendant before he signed as a witness, do you?

A. No, I do not.

Q. The defendant stated to you how much he received for this watch, did he not?

A. That is right.

Q. How much did he say he received?

A. $5 and a pint of whiskey.

Q. Did he identify the person to whom he sold this watch or the persons?

A. He told us it was two men and one woman; that he did not know them and he had never seen them before.

Q. Did he say he was too intoxicated—

The COURT. Officer, will you please speak louder?

Mr. BLACKWELL. I can't hear him very well myself.

The COURT. Talk up, please.

By Mr. BLACKWELL.

Q. Officer Furr, isn't it a fact that he stated the reason he couldn't identify these people was that he was intoxicated at the time?

A. No, he said he had never seen them before.

Q. He had never seen them before?

A. Yes.

Q. So he never said anything in the course of the confession about having been intoxicated at the time he sold the watch, is that correct?

A. He told me he probably would not recognize them again because he had been drinking and he had never seen them before.

Q. He didn't say he was intoxicated?

A. He said he had been drinking.

Q. Did he say he was intoxicated when he sold the watch?
A. I believe my statement was he said he had been drinking when he sold the watch and he probably would not recognize them because he had not seen them again.

60 Q. When was it reported to your precinct that the watch had been stolen from Mrs. Pearce's home?
A. The exact date I couldn't tell you. I don't recall.
Q. You don't have any idea when it was reported?
A. No. It was in the neighborhood of two weeks, I imagine, before the arrest. I just don't recall the date.
Q. When it was reported, did you question the defendant immediately after you received the report that the watch had been stolen?
A. No, not immediately after.
Q. Pardon me?
A. Not immediately afterward, no.
Q. By the way, how did you get his address?
A. Culpepper obtained his address.
Q. You don't know where he received it?
A. No, I do not.
Q. You can't give any date when this report was made to the precinct as to this watch having been stolen?
A. No.
Q. But to your best recollection, it was approximately two weeks after the watch was alleged to have been stolen, is that right?
A. I believe so.
Q. Did you question anybody else in reference to this alleged theft?
A. No, I did not.

61 Q. Did you question the defendant as to whether anyone else was present when he was working in this home or not?
A. Yes. We asked him who he was working with.
Q. What did he tell you?
A. A boy known as "Fathead", or some name like that.
Q. Did he tell you the date he worked there, the date the watch was alleged to have been stolen?
A. Yes.
Q. Did you check to see who worked there Friday and Saturday?
A. I did not.
Q. Did you check to see if anyone else worked at the place?
A. I did not.
Mr. BLACKWELL. That is all.

Mr. BURKE. Officer Furr, your part in the investigation was under whose direction?

The WITNESS. Culpepper's direction.

Mr. BURKE. That is all; no further questions.

(Witness excused.)

Mr. BURKE. Officer Culpepper, please.

Thereupon VERNON CULPEPPER was recalled as a witness for the United States and, having been previously duly sworn, resumed the stand and testified further as follows:

62 Direct Examination by Mr. BURKE.

Q. Your name is Vernon Culpepper, and you are a detective at the 10th Police Precinct?

A. Yes, sir.

Q. You investigated the complaint of Mrs. Harriett Pearce regarding the theft of a watch from her home?

A. Yes, I did.

Q. In connection with that investigation, did you arrest the defendant, Upshaw, at one time?

A. Yes, sir.

Q. When was that time?

A. He was arrested about two a. m. on June 6, Friday.

Q. Where was he at that time?

A. He was at his home. I believe the number is 1533 8th Street, N. W. I am not positive of that.

Q. What did you do with him at that time?

A. We took him to No. 10 Police Precinct.

Q. Did you then question him about a previous employment of his?

A. Pardon me, sir?

Q. Did you then question him about a previous employment of his at Mrs. Pearce's house?

A. Yes, sir, we did.

Q. Did he say whether he had been employed there
63 at one time?

A. Yes, he said he had.

Q. Who was his employer then?

A. I believe that it was the American Window Cleaning Company. I believe that is the name. It was some cleaning establishment, though.

Q. Did you ask him about his knowledge about the loss of a watch?

A. Yes, sir.

Q. While he was working there?

A. Yes.

Q. What did he say at that time?

A. At that time, he denied any knowledge of a watch.

Q. At a subsequent time, did he make any different statement?

A. Yes, sir, he did.

Q. When was that time?

A. About two p. m. Saturday, June 7.

Q. I show you this writing, Government's Exhibit 1. Can you identify that?

A. Yes, sir, I can.

Q. When did you first see that?

A. I saw this statement about two p. m. on Saturday, June 7. At that time I had the defendant read it and he identified it to me as being his statement given by him to Detective Furr.

Q. When did you put your name on there?

A. At that time, in his presence.

Q. And his name was already on there?

A. Yes, it was. I asked him if it was his signature and he said that it was.

Q. Then at a subsequent time did you take him to Mrs. Pearce's house?

A. Yes, I did.

Q. When was that, sir?

A. That was approximately at nine p. m. that evening.

Q. What occurred there at that time?

A. The defendant talked to Mrs. Pearce in the front room, the first floor of her home, and at that time he told her that while working in her bedroom upstairs, he had occasion to move a dresser; that he knocked the dresser over and the watch fell to the floor and he tried to catch the dresser and he stepped on the watch, breaking it.

He stated he was afraid to tell her he had broked the watch, so he went to the bathroom and got a piece of paper and wrapped it up and put it in his pocket.

At the end of his day's employment, he borrowed a few dollars from his boss to have the watch repaired. He went downtown and could not find a watch repair shop open, so he had a few drinks and went into a restaurant at Seventh and F. There he sat in a booth where he was later joined by two men and a woman, but they were unknown to him. He said, due to the fact that he had been drinking, he decided to sell the watch and lie about it; that he sold the watch to one of the men for $5 and a pint of whiskey, and he told them that the watch was his girl friend's.

He told Mrs. Pearce he would like to make restitution; that if he was permitted he would like to work and make back the money to pay for the watch.

He described the watch as being a small white metal watch with a black band and it had some diamonds on it. He described the place that he took it from and I asked Mrs. Pearce if that was the exact locality where the watch was missing and she said it was, the locality was the scene where she had left the watch.

Q. At the time that he acknowledged the statement to you, did you notice the address that he gave of the home of Mrs. Pearce?

A. Yes, I did.

Q. Was there anything unusual about that?

A. Yes.

Q. What was unusual about it?

A. That was not Mrs. Pearce's address. I believe she lives on Ninth Street and that address was something on Illinois Avenue. Mr. Furr had not had occasion
66 to go to Mrs. Pearce's home and he got it out of the phone book and it was the wrong address.

Q. What did the defendant say about that?

A. I didn't mention it to him.

Q. You did not?

A. I don't believe I mentioned it to him. I may have, but I don't recall it.

Mr. Burke. That is all.

Cross-examination by Mr. Blackwell.

Q. You arrested this defendant, did you not, in the company of Officer Furr?

A. Yes, sir.

Q. What was his condition as to sobriety at the time of his arrest?

A. I am not sure. I believe he was sober, but I am not sure.

Q. You believe he was sober?

A. Yes.

Q. But you are not sure?

A. No, sir.

Q. What is it that makes you so uncertain about it, Officer? You know this is a very important matter.

A. Yes. I would say in the way of his talk when he did talk. He was coughing an awful lot. He refused
67 to open the door when we identified ourselves as policemen.

Q. You broke the door down?

A. No, sir, but we did kick it a couple of times and then he opened it. In talking with him and in placing him in the automobile he was rational; at least. He was not staggering. He was coughing, not continuously, but at intervals, very short intervals.

Q. Did you disclose the purpose for which you arrested him or the charge which you suspected him of when you arrested him?

A. Yes.

Q. Did he admit it at that time?

A. No, sir.

Q. He denied it, is that correct?

A. Yes, sir.

Q. You took him to the precinct and you questioned him there, did you not?

A. Yes, sir.

Q. And he denied it then, did he not?

A. Yes, sir.

Q. And you questioned him later on in the afternoon, is that correct, and he still denied it?

A. Yes, sir.

Q. Was Mr. Furr present when you questioned him?

A. I don't believe he was. I talked to him through
68 the bars of the cell.

Q. Were you present the next morning when Mr. Furr talked to the defendant?

A. No, sir, I was not.

Q. What time did you arrive at the office on the morning June second?

A. I don't know whether I was there at all. I do know that I came in at two p. m.

Q. You were in charge of this investigation of the defendant, Upshaw, relative to this alleged theft, were you not?

A. I wouldn't say I was in charge of the investigation.

Q. You were not in charge?

A. No, sir. We worked on cases together and neither of us are in charge.

Q. You are not in charge?

A. No more than he.

Q. Does either one have a right to act in the absence of the other officer so far as taking persons to court, or something like that?

A. No, that is not usually done. The officer assigned to the case usually takes the case to court.

Q. But you and Officer Furr were the arresting officers in this case, isn't that right?

A. Yes.

69 Q. There came a time when Officer Furr was supposed to have gotten a confession from him?

A. Yes.

Q. That was around nine-thirty on Saturday?

A. Yes.

Q. Would Officer Furr have been acting within his rights and not subject to his superior officer until he got that confession?

A. I can't say, but it was my assignment and—

Q. (Interposing) How long have you been a precinct detective?

Mr. Burke: Just a moment. Let the witness finish the answer.

The Witness. It was my assignment and usually the man the case is assigned to, the case is taken to him. He is usually booked to the man he was assigned to and that man usually takes him to court. It is his responsibility.

By Mr. Blackwell.

Q. How long have you been a precinct detective?

A. About three years, off and on.

Q. According to your procedure, a man may be arrested early Friday morning and if you don't feel disposed to take him to court Friday or Saturday, there is no other officer to take him there?

A. That is not correct. I didn't say I didn't feel
70 disposed to take him to court.

Q. Why didn't you take the man to court after you arrested him?

A. I had not completed the investigation of the case.

Q. Why didn't you take him on Saturday?

A. I had not completed the investigation.

Q. Isn't it true Officer Furr got the confession?

A. I didn't know anything about that until two p. m.

Q. He didn't call you and tell you that he had gotten a confession?

A. I don't know that I was home.

Q. How did you know about the confession when you arrived at the precinct?

A. I came in and there was a note in my box.

Q. When you came in, there was a note in the box which stated, in substance, what?

A. There was a note stating that Upshaw had signed a statement and that Mrs. Pearce had been notified.

I went back and talked to Upshaw and he said he had tried to get the wagon man to call the night before because he wanted to tell me about it and I didn't show up. He asked me why I didn't show up and I told him I had been working and I didn't know he wanted to see me.

Q. When did you see the confession after you saw the note in the box?

71 A. I believe the note was attached to the confession.

Q. You didn't see Upshaw sign this statement?

A. I didn't see him sign it.

Q. You don't know the conditions under which he made the statement?

A. Only his statement to me. He told me he had been trying to get to me the night before.

Q. You were not present when the alleged confession was dictated to Mr. Furr, were you?

A. No, sir, I was not.

Q. How soon after this alleged theft was it before it was reported to the precinct?

A. I would say it was two or three weeks after the theft before it came to my attention.

Q. Did you question the defendant immediately after your receipt of this information, at least after the receipt of this report concerning this theft?

A. I questioned him as soon as I possibly could.

Q. How soon was that?

A. As soon as I could catch him.

Q. How did you get his address on Eighth Street?

A. I got it, I believe, from the American Window Cleaning Company.

Q. They gave you his address?

A. I believe they gave it to me or one of the other
72 men working there from time to time.

Q. Did you question any other men who worked there?

A. Yes, sir.

Q. What did they say about this?

A. They told me they did not know about it. They worked at different times than when the defendant was there and they said to me they didn't know anything about it.

Q. How many did you question?

A. I believe there were four.

Q. You questioned four of the men?

A. Yes, sir.

Q. Did they tell you when they worked there?

A. Yes, sir.

Q. What days did they work there?

A. I don't know the individual days. One of them worked there at the same time that Upshaw was working there. Upshaw was working upstairs and he said he was working downstairs and Upshaw verified that. I don't recall his name. Upshaw referred to him as "Fathead". I don't know what his name is.

Q. You questioned about four other men who worked there?

A. Yes, sir.

Q. Did you ascertain whether or not they worked there on subsequent times to Upshaw?

A. Only one of them worked there the same day
73 that Upshaw worked there.

Q. I take it the others worked on two subsequent days to that, is that correct?

A. That is correct.

Q. Did you check to see if he continued to work for American Cleaning Company after this alleged theft?

A. Yes. He did not go up the following day.

Q. You are sure they didn't make a report the following day?

A. They told me he did not come to work.

Q. Are you sure about that?

A. That was a telephone call. I talked to Mr. Rosenburg.

Q. What is his connection with the company?

A. I believe he is a co-owner of the company, but I am not sure of that.

Q. You are not sure whether he is co-owner?

A. When I talked to them over the phone, I asked for the gentleman in charge. I didn't ask him, but he told me that. Later, I talked to another gentleman on the phone and he told me he was some relative of Mr. Rosenburg's and he was in charge when Mr. Rosenburg wasn't there.

Q. He told you he didn't report for work on the second of May?

A. The men that worked there, the co-workers of
74 the defendant, told me he did not report back to work at all.

Q. And he has not worked there since May 1, is that the information you received?

A. Yes, sir, that is right.

Q. You didn't have any trouble getting his address from this company, did you? They had his address as his employer, did they?

A. I believe they did. I am not sure whether I got the correct address from them or whether I got it from one of the co-workers, but I believe I got it from the American Window Cleaning Company.

Q. There came a time when you took the defendant to see Mrs. Pearce, did you not?

A. Yes, I did.

Q. Before you took him there, you told him you wanted him to go there and tell her, in substance, what he had said in that alleged confession, is that right?

A. Yes, sir.

Q. Did you threaten to tie him to a car and drag him out there?

A. No, sir.

Q. By the way, did you take him out there in the course of a storm?

A. There was a violent rainstorm while we were on the way to Mrs. Pearce's home.

75 Q. You told him you were going to see that he was dragged to his death if he didn't confess and tell her the same thing he said in the confession?

A. No, sir, I did not.

Q. Did you have to stop on your way out there during the storm?

A. Yes, the windshield wipers were not working.

Q. And the storm was such you had to stop on the way?

A. That is right.

Q. At Mrs. Pearce's home; what happened?

A. I knocked on the door and told Mrs. Pearce I had the fellow outside who had stolen her watch. I asked if it was all right for me to bring him in so he could make the statement to her.

Q. Did he have a seat or did he stand?

A. No, sir, Mrs. Pearce and I stood there in the front room.

Q. Who was present, you, the defendant, and Mrs. Pearce?

A. Mrs. Pearce was sitting on a couch over in the corner.

Q. The complaining witness, Captain Pearce, was present?

A. That is right.

Q. Did the Captain question the defendant any?

A. No.

76 Q. Are you sure?

A. I am sure he did not.

Q. Are you sure?

A. He asked me if I cared to sit down. I don't know whether he asked him, but I said "No."

Q. You all stood?

A. Yes.

Q. The defendant offered to pay for the watch?

A. Yes, sir, he did.

Mr. Blackwell. I have no further questions.

Mr. Burke. At the time you first received information of the defendant's address, could you find him?

The Witness. No, sir, I could not.

Mr. Burke. That is all.

By Mr. Blackwell.

Q. How long after the theft was it before you received this information?

A. What information are you referring to, Mr. Blackwell?

Q. I am trying to ascertain how long after the reported theft was it before you tried to locate the defendant.

A. I tried to locate him the same day that it was reported to me.

Q. When was it reported?

A. I don't know. I can give you the exact date, but
77 I don't know it offhand.

Q. You have been down here several times before for this case to be called?

A. I beg your pardon?

Q. You have been down here several times before for this case to be called?

A. No, sir.

Q. You have been here once before?

A. Once before.

Q. Did it occur to you that you should know the date that that was reported?

A. I didn't think so.

Q. You have been a city detgetive for three years?

A. That is right.

Q. When you first tried to locate the defendant, did you have any difficulty in getting his address?

A. He was in Lorton. I didn't have any difficulty. I got it from the D. C. Jail.

Q. You got it from the D. C. Jail?

A. Yes.

Q. There came a time when he was dismissed from Lorton?

A. Yes.

Q. Do you know what he was in Lorton for?

A. I don't know.

78 Q. You had been to his home prior to the time he was discharged from Lorton?

A. May I go back? You asked if I knew why he was in Lorton. I was told why he was at Lorton but I don't know that that was the fact.

Q. That is all right. Anyway, you went to his home while he was at Lorton?

A. Yes, sir.

Q. That is at 1533 Eighth Street?

A. Yes, sir.

Q. You left word after he had been discharged from Lorton that you wanted to see him, did you not?

A. Yes, sir.

Q. And he tried to contact you, did he not?

A. No, sir.

Q. You don't know whether he did or not, is that it?

A. To my knowledge, he did not.

Mr. BLACKWELL. That is all.
Mr. BURKE. That is all.
(Witness excused.)
Mr. BURKE. That is the evidence for the prosecution.
Mr. BLACKWELL. Mr. Upshaw.

Thereupon—

79 ANDREW UPSHAW, the defendant, was called as a witness in his own behalf and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. BLACKWELL.

Q. State your full name, please, and keep your voice up so everybody can hear you.
A. My name is Andrew Upshaw.
Q. Where did you live prior to your incarceration?
A. 1533 Eighth Street, N. W.
Q. You heard the testimony in this case today concerning the theft of a watch from the home of Mrs. Pearce. Did you work at Mrs. Pearce's home on the first of May of this year?
A. I did.
Q. Who were you working for?
A. The American Window Cleaning Company.
The COURT. Keep your voice up.
The WITNESS. The American Window Cleaning Company.

By Mr. BLACKWELL:

Q. While you were working there, did you see a wrist watch?
A. I did not.

Q. You heard the testimony of Mrs. Pearce about
80 her missing a watch, and the testimony of the two police officers who subsequently claimed that you confessed that you took the watch from Mrs. Pearce's residence, is that correct?
The COURT. Wait a minute. Is what correct?

By Mr. BLACKWELL:

Q. Is it a fact that you confessed taking a watch from Mrs. Pearce's home?
A. I did confess to Officer Furr for the simple reason I was forced to do it.
Q. You what?
A. I confessed to Officer Furr concerning the watch because I was forced to.
Q. What do you mean by "forced to"?
A. I was beaten, bruised and knocked about my head and stomach. He hit me with his fists and his knees. I was thrown down on the floor.

Q. When were you arrested?
A. On the 6th of June.
Q. About what time?
A. Two.
Q. Two what?
A. About two o'clock in the morning.
Q. Did they ask you at that time whether or not you had taken this watch?

A. They came to my house and they didn't say
81 anything to me about no watch.

Q. What did they say?

A. They came and banged on the door. I was lying awake and I didn't know who it was and I asked who was it and they said it was the police. They said, "Are you going to open the door or am I going to break it down?" I opened the door. They walked on past and down the hall and said, "Come in, boys."

I said, "No one is out there", and in walked uniformed officers who were colored.

Q. Did there come a time when they took you to No. 10 Precinct and did they question you concerning a watch that was supposed to have been taken from Mrs. Pearce's home?

A. That is right.
Q. When was that?
A. The same morning they taken me to No. 10 Precinct.
Q. Were you intoxicated at the time?
A. I had not drank anything. I was not intoxicated.
Q. Did they start questioning you immediately on your arrival at the precinct station?

A. When we got to the precinct, we walked into the precinct, into a private room. Culpepper went out and left Detective Furr and myself in this private room alone. Then that is when Detective Culpepper started asking me about the watch. I told him I didn't know anything
82 about a watch. In fact, I didn't know whether he was talking about a lady's watch or a man's watch. He just said "watch" and that was all I knew.

He began banging me on the head with mittens on his hand, banging me in the stomach and used something like, what do they call it, ju-jutsu. I don't know what it was.

Q. How long did they continue that?

A. It was fifteen minutes past three o'clock when we come back into the place where they write you up, the desk.

Q. Fifteen minutes past three a. m.?
A. A. M., fifteen minutes past.
Q. Then what happened?

A. Culpepper asked me if I was ready to go home and I said, "Yes, I am."

He said, "Come on up", and I went to the desk. He asked me to take off my belt and they booked me and then they took me to the cell block, and I don't know what I was booked for.

Q. Did you see them after that?

A. I saw Culpepper the next morning about eleven o'clock.

Q. You mean Friday morning about eleven o'clock?

A. Friday morning about eleven o'clock.

Q. What did he say?

A. He came to my cell and asked if I was ready to confess to him and tell him the truth about the watch. I told him I didn't know anything about a watch. He told
83 me, "I have got on my work clothes now and I am ready to make you know something about the watch or we will kill you before the day is over."

He said, "I don't want to talk to you no more", and he left the cell.

Q. And he left?

A. He left the cell.

Q. Then when did you talk to Culpepper or any other officer concerning this case?

A. About three-thirty on the same day I talked to Furr. He came to my cell and he asked me how was I feeling. I told him I wasn't feeling good. He asked me if I was ready to go home and I said, "I am".

He said, "Will you tell me what you know about this watch and then I will let you go home?"

I said, "I don't know anything about a watch. I don't know nothing."

He said to me, "You will know something by the time I get a key."

He got the key and he banged me a few more licks at the side of the head. He said, "Are you going to tell me what you know about the watch?"

I said I would tell him. I said I did take the watch. I did that in order to keep from being beat.

Q. Did you describe the watch?

84 A. I did not.

Q. Or the place where you were supposed to take it from?

A. I did not.

Q. How about the description of the watch in the alleged confession? Did you admit having signed that?

A. I made no remarks about how the watch looked or nothing of the kind because I had not seen it.

The Court. You were asked if you signed that paper.

The Witness. I don't know whether I signed that paper or not, Judge, your Honor. I signed a paper.

By Mr. Blackwell.

Q. This is your signature, is it not?

A. That is my signature, yes, sir.

Q. Did you read it before you signed it?

A. No, sir, I did not.

Q. Did you dictate that confession?

A. Sir?

Q. Did you dictate that confession?

A. I told the man, Officer Furr, that I taken the watch. He said to me, "Did you take the watch from Captain Pearce's home located at—" I don't remember the address— "on Seventh Street, Northwest."

Q. What I am trying to ascertain is this: Did you tell him what was in that confession, or did he put what
85 he wanted in?

A. According to the way I heard him read it to these people over here, there are some parts I never heard of before.

Q. You said you worked for the American Window Cleaning Company?

A. Yes.

Q. Did you work there on the second of May?

A. I worked there on May second.

Q. Did you work for Mrs. Pearce on that day?

A. I worked for Mrs. Pearce on May 1.

Q. Did you work for her on the second or third?

A. I have not worked for Mrs. Pearce except only one day, May 1.

Q. Why didn't you work on the second?

A. I would have worked there on the second but the boy who worked with me, we decided we would go back to her house the next morning and try to hurry and finish the job early. We suggested getting back and leaving the office at eight-thirty. I got to the office at eight-twenty and they told me this boy and some other boy had gone to the house

Q. Did you work?

A. I worked until eleven o'clock. I told them I wasn't feeling good. I got a dollar from Sullivan, the manager, and I went home. In other words, I stopped at the
86 drug store and had a dose of castor oil mixed and I went home.

Q. Did you work there the following week?

A. I worked there from Monday to Friday.

Q. Did you work there the week after that?

A. I did not.

Q. Why didn't you?

A. Because I was locked up on May 10th for intoxication.

Q. As a result of you being locked up, did you serve some time?

A. Twenty days.

Q. And that was for intoxication?

A. It was.

Q. When you were released, did you receive information that somebody at No. 10 Precinct wished to see you, or something to that effect, the officers of No. 10?

A. When I was released on May 31, I arrived home and my landlady told me a detective had been there looking for me. I asked her what he wanted. She said they asked her concerning something about me and a truck. She said "he left a card for you to call him up."

I got on the phone right immediately and I called up No. 10. Officer Culpepper was out, so someone, whoever I talked to—I don't know who I was talking to—so then I called him on May 31, which was on Saturday. Every
87 time I called he wasn't there, so someone would tell me he wasn't there anyway.

Q. After you had signed this alleged confession, did there come a time when you were taken to Mrs. Pearce's home?

A. I was.

Q. Who took you there, if you recall?

A. I went to Mrs. Pearce's home with Officer Culpepper and a uniformed driver. I don't know who he was.

Q. Did he tell you where he was going to take you prior to your leaving the precinct?

A. He did not.

Q. What did he say before you left, if anything, to you?

A. Well, when he came to me I had just returned back to the precinct from down at Headquarters for the line-up, and he came in and he told me to come on out. I said, "Where are we going now?"

He said, "You are going"—to some place. I am not going to say that, if you will permit me not to say so.

Q. Don't bother about that, but do you mean he used some bad name?

A. Yes. So I says, "Well, where to?" Just like that. We went out and got in the car. I didn't have no idea where we were going in the car or nothing like that. We got to Georgia Avenue and Taylor Street. It began to rain so you couldn't see anything. He pulled to the side
88 there in the Safeway Grocery parking lot at Georgia Avenue and Taylor. He said to me, "You are going

to know something about this watch between now and tomorrow morning, and I want you to tell Captain Pearce's wife the same thing that you have said on that statement or else". That is all.

Q. You were in the car when it was parked, then?

A. That is right.

Q. And it was stormy?

A. It was.

Q. Subsequent to that, after the storm had abated, you proceeded to Mrs. Pearce's home, is that correct?

A. We proceeded on our journey.

Q. When you went to her home, what did you say?

A. When I walked in, Detective Culpepper rang the doorbell. Mrs. Pearce came to the door and we went in. Detective Culpepper said to Mrs. Pearce, "We have your prisoner here that taken away your watch", so when we walked in, he said, "I want you to tell her what happened".

I asked one question when I walked into her house. I said, "Mrs. Pearce, they told me you missed a watch".

He said to me, "Don't ask her any questions. Just tell her what you told us", so then I told Mrs. Pearce that I, in working in the house, went to move the dresser table and it overturned. The drawer fell out and her watch fell on the floor. I stepped on it and I taken it.

89 I was going to take the watch downtown and have it repaired and bring it back to her, that is, in order to keep from having any kind of disturbance about the watch, and I said, "I am willing to pay for the watch or anything that can help me to prevent all this going through with and getting out of all this, whatever I am in. I am willing to pay you for the watch, whatever the cost is it don't make any difference. But I don't have any money, I will have some."

Mrs. Pearce said to me, "It is not money that is valuable to me, but the engravings of the watch" is what she said to me.

Q. Was that statement made of your own free will?

A. The statement was not made of my own free will because the way I had been beaten by Detective Furr and knocked out almost unconscious and out of breath and bleeding about the mouth, and I have a contusion in my stomach. I was operated on in 1943 and I never had any trouble until he knocked me around.

I was willing to say anything to keep from being beaten any more.

The Court. Let me ask this: You told this story about how you stole the watch simply because you had been beaten and you were afraid, is that right?

The WITNESS. Yes, sir.

The COURT. Why did you go into detail about having been cleaning behind the vanity and knocking the vanity over and the watch falling out? Why didn't you just say you stole the watch out of the vanity?

The WITNESS. I didn't go into the detail like I was cleaning behind the vanity or anything like that. I told them I turned the thing over and the drawer fell out.

The COURT. Why didn't you say you looked through the drawer?

The WITNESS. I had not looked through no drawer. I had never seen it. I had never seen a watch.

The COURT. I want to know why, if you were just lying because you were in fear, why you didn't just say, "Yes, I stole the watch. I opened the drawer and took it out."

Why did you go through all this business of knocking the thing over and it falling out of the drawer and all that?

The WITNESS. Well, that was just the first thing, anything. I was willing to say anything that I thought would help me from being beaten. I got over to the jail and the doctor—I don't recall his name over there—I told him about what trouble I had been having with my stomach and my neck, and there are two doctors, the officer permits me to use hot towels now on my neck. I still suffer trouble around my neck now from this Detective Furr pounding me on the side of the head.

By Mr. BLACKWELL:

Q. Did you make a report to the jail that you had been beaten by the police officers when you arrived there?

A. I didn't on my arrival, no.

Q. At the first opportunity, did you make a report?

A. The first opportunity—we usually are there probably three or four days when the doctor comes around and makes an examination of you and he has a paper for you to sign in case you were brutally treated or if you were not. I was, and I told the doctor that I was and I also told him about the condition I was having in my stomach and my neck.

After I was at the jail for some while, I continued to have trouble with my neck and have been having it practically ever since I have been there.

The COURT. You suffer with your neck?

The WITNESS. In here (indicating). There is a crook ever since this Officer Furr has been beating on me and knocking on me as he did.

By Mr. BLACKWELL:

Q. Then you deny having taken the watch while you were working in Mrs. Pearce's house?

A. Yes, sir.

Q. You deny that that confession was made voluntarily?

A. Yes, sir.

92 Mr. Blackwell. You may inquire.

The Court. Mr. Burke, we will have to adjourn at this time. I am sorry, but I cannot finish today and I think this is the time to stop.

We will adjourn until tomorrow morning, ladies and gentlemen, at the usual hour.

Be careful, please, not to discuss the case at all among yourselves or with anyone overnight.

(Thereupon, at 3:35 o'clock p. m., an adjournment was taken until Tuesday, July 29, 1947, at 10:00 o'clock a. m.)

93 In the District Court of the United States
For the District of Columbia
Criminal Division No. 1.

Criminal No. 628-47

United States
vs.
Andrew Upshaw, Defendant.

Washington, D. C.,
July 29, 1947.

The above-entitled cause came on for further trial before Hon. Henry A. Schweinhaut, Associate Justice, and a jury, at 10:00 o'clock a. m.

Appearances

On behalf of the United States: John F. Burke, Esq.
On behalf of the defendant: Joel D. Blackwell, Esq.

94-95 Proceedings

Thereupon—

Andrew Upshaw resumed the stand and, having been previously duly sworn, testified further as follows:

Cross-examination by Mr. Burke.

Q. Upshaw, you live at 1533 Eighth Street, N. W., do you?

A. I do, sir.

Q. That is between what lettered streets?

A. Between P and Q, sir.

Q. You say you attempted to get in touch with Officer Culpepper when you got out of the workhouse for intoxication, is that right?

A. I did.

Q. You called him several times, did you?

A. I called him three times on the one day, May 31.

Q. Who was the station clerk?

A. I don't know.

Q. He gave you his name, didn't he?

A. Pardon me?

Q. Didn't the station clerk give you his name when you called Officer Culpepper?

A. He did not. In fact, I didn't even know I was
96 talking to the station clerk.

Q. Don't you know every time you call the precinct or any police that the person who answers the phone always gives his name?

A. When you call the precinct, of course, you understand you call it by number. I believe it is 4000. Well, he said the party wasn't at number 4000. It was some other number.

Q. Did you make those calls from a pay station telephone?

A. I think one of those calls or two of those calls I made from a pay phone and one call I made from my own phone at home.

Q. How far do you live from No. 10 Precinct?

A. I don't know exactly how many blocks it would be. No. 10 is Georgia and Columbia Road, and I live in the 1500 block of Eighth Street.

Q. Was that the same day that you got out of the workhouse that you called the precinct?

A. It was the same day.

Mr. BLACKWELL. If your Honor please, the defendant mentioned that No. 10 is at Georgia and Columbia Road. I understand it is Georgia Avenue and Park Road.

The WITNESS. Park Road.

Mr. BURKE. Whose testimony is that, yours?

97 Mr. BLACKWELL. I think the Court can take judicial notice of the location of the precinct, because this man thinks it is Columbia Road and the question was directed to how far the precinct was from his home. Since Park Road would be four or five blocks farther, I think we are entitled to that admission.

Mr. BURKE. The question isn't where it is but where he thinks it is, and I object to your correcting the testimony.

The COURT. Let the matter rest where it is.

By Mr. BURKE.

Q. You say that the officer did not let you read the statement. Were you allowed to read that?

A. I was not.

Q. Before you signed it?

A. I was not.

Q. You can read, can't you?

A. I can.

Q. And you can write. Haven't you stated that you have received a college education?

A. Pardon me?

Q. Haven't you at one time stated you received a college education?

A. To who?

Q. I asked you if you stated that to the authorities at the jail?

A. I did not.

Q. How far did you go in school?

A. How far have I gone in school?

Q. That is right.

A. I was one year high.

Q. You were convicted of housebreaking here in the District of Columbia in 1938; were you not?

The WITNESS. Judge, your Honor, must I answer that?

The COURT. Yes.

The WITNESS. Again, please, sir.

Mr. BURKE. Will you read the question?

(The pending question was read by the reporter.)

The WITNESS. I was not.

By Mr. BURKE.

Q. Were you convicted of larceny in the District of Columbia in 1938?

A. I was.

Q. Were you convicted of larceny in Alabama in 1933?

A. I was not, I don't think, not definitely.

Q. What?

A. Not definitely. I don't think I were. What year did you say?

Q. 1933.

A. No.

Q. I ask you whether you were sentenced to from 12 to 18 months on November 14, 1933, for grand larceny?

A. I was not.

Q. Did you serve a term of imprisonment in a penitentiary in Alabama in 1933?

A. I did.

Q. What was that charge for?

A. That charge was larceny after trust.

Q. And did you serve a term for larceny here in the District of Columbia in 1936?

A. I did not.

Q. I ask you if you were arrested on May 25, 1936 charged with Petit larceny and sentenced to 30 days?

A. No.

Q. I ask you whether you served a term of imprisonment of 30 days in 1936?

A. I don't recall just now.

Q. I ask you if you were convicted of assault in the District of Columbia in 1937?

A. Just the year I don't know. I was convicted of assault one year. I don't know what year it was.

Q. That was in the District of Columbia?

A. It was.

Q. You heard me read this statement yesterday, did you?

A. I did.

Q. Had you ever heard that read before?

100 A. Some parts of it, I had. Some parts I had not.

Q. At what place did you hear it read?

A. Pardon me?

Mr. BURKE. Read the question.

(The pending question was read by the reporter.)

The WITNESS. Some parts of it. There were some things on there I heard read at Headquarters over at the Municipal Building, whatever it is; across the street here, anyway.

By Mr. BURKE.

Q. At what time was that?

A. It was on June 7. I don't know what time it was, but it was the evening of June 7.

Q. It was after you were taken to Mrs. Pearce's house, wasn't it?

A. It was not.

Q. Before?

A. Before.

Q. Who read it?

A. I don't know who it was reading out to the detectives, whoever it is out at the line-up. I don't know who it is.

Q. Officer Furr typed this in your presence, didn't he?

A. He did not.

Q. He did not?

A. No.

Q. Was it prepared for you when he brought it

101 to you to be signed?

A. Was that prepared?

Q. Yes.

A. Officer Furr brought a paper into the cell and said

to me if I was ready to go home for me to sign for my property. I signed for the property three slips. I don't know what it was.

Q. I am going to ask you, is that your signature at the bottom of this paper, "Andrew Upshaw"?

A. This is my signature, Andrew Upshaw.

Q. When did you sign that paper?

A. I was at No. 10 Precinct.

Q. Were you in the Clerk's room or in the cell block?

A. When I signed that paper?

Q. Right.

A. I were in the cell block.

Q. What prisoners were you with?

A. Pardon me?

Q. Who were the other prisoners in there with you?

A. In my cell?

Q. Yes.

A. No one.

Q. And besides Officer Furr, was any other person present when you signed that paper?

A. There wasn't.

102 Q. Is this the paper he said for you to sign for you to be released so you could go home?

A. It was a paper like that.

Q. Did you know what was in this paper?

A. I did not.

Q. Do you know where Officer Furr got the contents of this paper, the information which is in the contents of this paper?

A. Some parts of the information in there he got from me.

Q. From you?

A. Some parts of it.

Q. What information was it that you gave him?

A. When he came to my cell, he asked me if I was ready to confess to the truth. I told him that I didn't know anything concerning a watch, didn't know anything about it. So he said to me, "Wait until I get the key", and then I would know something. Therefore, he made his threats and knocked me on the side of the head.

Q. Did he hit you on the ear?

A. I said on the side of the head.

Q. What with, with his fist?

A. His fist.

Q. Did you bleed?

A. When I got to the precinct on June 6, during

103 the different blows that he gave me, of course I was

bleeding from that night then on up to different times, I mean from then on up.

Q. That was from your nose or mouth?

A. From the mouth.

Q. That is something you can see. Did you show that to anybody?

A. Did I show it?

Q. Yes, the blood on your mouth.

A. On my mouth?

Q. That is right.

A. There were different officers around about the place who saw me spitting blood and also Detective Culpepper.

Q. And they all saw it, did they?

A. They saw me spitting blood.

Q. You were spitting blood, were you?

A. I spit blood after Detective Furr and myself were in the room all alone.

Q. What was the disorder that caused you to cough when you were first apprehended?

A. What was my disorder that caused me to cough?

Q. Yes.

A. I might cough now but not just continuously so.

Q. Did you have a cold at that time?

A. At that time, I no doubt probably had a touch
104 of a cold.

Q. Were you coughing on account of the cold?

A. I don't know just definitely what caused me to cough.

Q. You still haven't said what information you gave Officer Furr which is in this paper.

A. I am sorry, sir, but you called my attention away to something else and asked me something else.

Q. Will you say now?

A. Back to the question you asked me, what information did I give him?

Q. That is right.

A. I told him that I taken the watch from the address which he gave—23—the odd number I don't know, of Illinois Avenue that he gave. I told him the lady's house where I worked was on Seventh Street and I taken the watch.

He asked me where was this watch. I told him it was lying on the table. Then he turned from me to the desk and he started writing in handwriting. After he finished his handwriting, he turned to me and he said, "I will read this off to you", and he told me, he said, "I want you to say these same words again, or can you say them again?" I said, "I think I can", so then he read. The beginning

of his reading was, "As I was working in the upstairs room of this address he gave, I attempted to move a piece of furniture about the house. The table tilted, and as I was trying to catch these different things about the table"—I think that is the way it read—"that the watch fell from the drawer and I stepped on the watch and broke the crystal and took it downtown to have it repaired so I could bring it back and replace it without them knowing it.

"I entered a lunchroom at Seventh and T Street, N. W., and I was drinking. I was in the company of two men and one lady. I sold the watch to them for the sum of"—how much did you get for it, he asked me then and I said, "$5".

So then he put in $5.

Now, I noticed when you were reading yesterday something concerning $5 and a pint of whiskey. Later, he added to me, "Did you get some whiskey, too, for that watch?", and I said, "Yes".

I was saying anything to avoid a blow at the side of the head.

Q. He had that all written down in handwriting?

A. In handwriting.

Q. And he is the one who told you that you had dropped it, stepped on it, and broken the crystal, is that right?

A. He didn't tell me that. He wrote that down and this is what he read off to me.

Q. You didn't tell him that?

A. I did not tell him that I dropped the watch or I broke it or anything like that. I told him I got it off the table.

Q. What time of day was it that he brought this handwritten statement to you and read it to you?

A. What time of day did he what?

Q. Bring the statement in that he read to you?

A. That he was reading to me?

Q. Right.

A. This was sometime during the morning. I don't know just definitely what time it was because I couldn't see no watch.

Q. The same day you were arrested?

A. It wasn't the same day I was arrested.

Q. It was Saturday, was it?

A. It was Saturday.

Q. How much later was it that he brought you this typewritten paper?

A. He brought me the paper that was typed off, I would say, within about thirty minutes later.

Q. When Officer Culpepper came in a few hours later, he brought you this statement and you said that that was your story, didn't you?

A. When I went back into the cell, I was placed in the front cell where I could see throughout the precinct. I saw Officer Culpepper going in different parts of the precinct but he didn't come in to talk to me.

107 Later on, he came and asked me why did I make the statement to Officer Furr. I said I would make any kind of statement to Officer Furr to avoid a blow, don't you think that is logical?

So then Officer Culpepper, Officer Furr and myself on Saturday afternoon, we was in this same room which we entered the first night that we was there. He was making some kind of paper, I guess the paper for me to go down to the line-up.

Q. How many times have you been in the 10th Precinct?

A. What?

Q. How many times have you been in the 10th Precinct stationhouse?

A. That was my first time that I remember of.

Q. You don't know anyone there, then?

A. No.

Q. You don't know any other persons who were there at the time that you were bleeding?

A. You mean definitely know them?

Q. That is right.

A. No, I don't know them definitely.

Q. So you told Officer Culpepper you signed this to save yourself from further pain?

A. He didn't ask me. He asked me why did I sign it, and I told him I would tell anybody anything to avoid another blow.

108 Q. You suffered injuries from these blows, did you?

A. I did.

Q. When you told the doctor about it at the jail, did you show him these injuries at the time?

A. I was nude at the time.

Q. Did you show him any injuries?

A. There wasn't anything to show, I mean outwardly.

Q. There was nothing to show?

A. Not outwardly.

Q. Did you have him examine your mouth for cuts; on your lips?

A. There were no cuts on my lips.

Q. What caused you to bleed?

A. What caused me to bleed?

Q. Yes.

A. That I don't know. I mean those blows about me, if someone would pound you in the stomach as I were, no doubt they would cause you to bleed.

Q. Was your tongue cut? Were your lips cut?

A. My tongue were not cut.

Q. What part of your mouth was injured, then?

A. What part of my mouth were injured?

Q. Answer the question, don't repeat it.

A. I just told you that there was no part of my mouth injured. I told you probably the bleeding came from
109 down inside. I don't know what caused me to bleed.

Q. Were you bleeding when you appeared at Mrs. Pearce's house?

A. I was not bleeding when I appeared at Mrs. Pearce's.

Q. Were you suffering?

A. From my neck and the injuries inside, from the blows, of course.

Q. Did you think to ask for relief there?

A. I didn't see any reason why I should ask Mrs. Pearce for anything, so I didn't ask for it.

Q. You knew what to tell her because you had been told by Officer Furr what to tell her, is that right?

A. I tried to commit as near as I possibly could the things he read off to me.

Q. How much were you earning while you were working for the American Window Cleaning Company?

A. My salary was $6 a day and I had to pay my union dues out of that and then the tax out of that.

Q. How much money did you draw the last time you worked for these people?

A. The last pay that I drew was May 10th, which the payday—I mean the payroll was not correct. It was, I think, $14 and something, but I mean it wasn't correct.

Q. They deducted some money they had advanced you from your pay, didn't they?

110 A. They deducted $5 which I had not taken out.

Q. For what?

A. $5 that I had not gotten.

Q. You mean that they paid you $5 less than you were entitled to?

A. They paid me—you say they fined me in order—I am telling you they taken out $5 which they was supposed to fine me which they didn't.

Q. In other words, they withheld $5?

A. They withheld $5 from me I didn't take up.

Q. Did you borrow some money from them?

A. I did not borrow that money.

Q. That was for work for the week ending the 10th of May?

A. The week was supposed to begin on May 1, which was Thursday. That is the beginning of the week. From Thursday to Thursday the payroll goes in.

Q. What day of the week did you receive your pay?

A. The last pay, you mean?

Q. That is right.

A. That was May 10.

Q. On what day of the week?

A. Saturday.

Q. And you had worked there through that week, had you?

A. Yes, sir, I had.

111 Q. Every day that week?

A. Yes, sir.

Q. Five days at $6 a day?

A. Yes.

Q. That is $30.

A. Yes.

Q. And you only received $14?

A. $14 and some cents.

Q. So you didn't receive $16 that you were entitled to?

A. In other words, as I am trying to tell you, the payroll was not correct.

Mr. BLACKWELL. I don't see the materiality of this line of questioning. I don't see what it has to do with this case.

The COURT. I have some question about it, Mr. Burke.

Mr. BURKE. I don't care to tell this witness about it. He will soon catch on. I will come to the bench.

The COURT. Very well.

(Thereupon, counsel approached the bench and the following proceedings were had out of the hearing of the jury:)

Mr. BURKE. This man did not receive his full wages so it must have been for a deduction of some kind. I believe it was on account of money he had borrowed the week before to get this watch fixed, as he said in the statement.

112 Mr. BLACKWELL. That is too speculative.

The COURT. I don't believe that makes it admissible. I think it has materiality.

Mr. BLACKWELL. And he was going to get the watch fixed before pay-back, is that right?

Mr. BURKE. That is right.

Mr. BLACKWELL. Then you don't contend the watch was stolen. You take the position he broke the watch and was going to get it fixed, so you are abandoning your contention.

Mr. Burke. I do not abandon anything.

The Court. You may ask him.

(Thereupon, counsel returned to the counsel table and the following proceedings were had in open court:)

By Mr. Burke.

Q. You received $30 for that week?

A. If the payroll had been right, I should have received $30.

Q. And you received $14?

A. And some cents.

Q. Wasn't that deduction made because they had advanced you money the week before?

A. Pardon me.

Q. Wasn't that deduction because you had drawn advances the week before?

113 A. If I had drew money for the week before on advances, it would have been taken out the week of May 3.

Q. How much had you received?

A. I don't know what the payrolls were.

Q. Did you receive anything?

A. I did.

Q. Did you receive your full pay on that day?

A. I received my correct pay after paying my union dues and tax.

Q. Did Officer Culpepper ever lay a finger on you?

A. How do you mean?

Q. Did he hit you like you say other officers did?

A. Officer Culpepper only kicked me on my leg, the forepart of my leg.

Q. Was that before or after you told him you would admit that statement was true to save yourself any further beatings?

A. That was before.

Mr. Burke. That is all.

Mr. Blackwell. That is all.

(Witness excused.)

Mr. Blackwell. Call the man with the records from the jail.

Thereupon

114 George E. Stokes, was called as a witness for and on behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Blackwell:

Q. Will you state your full name?

A. George E. Stokes.

Q. What is your business, sir?

A. Record Clerk, District of Columbia Jail.

Q. Do you have the records with you in response to a subpoena issued in the Andrew Upshaw case?

A. I do.

Q. Will you explain them, please?

Mr. Blackwell. I take it, Mr. Burke, you will admit the authenticity of these records?

Mr. Burke. I haven't seen them yet.

(The records were handed counsel.)

Mr. Burke. No objection.

Mr. Blackwell. If your Honor please, we wish to offer this as Defendant's Exhibit No. 1 for identification. It is a medical report, No. 21346, the second page. It is the report of the jail physician, the District Jail.

The Court. You want to offer it in evidence, do you?

Mr. Blackwell. I wish to offer it as an exhibit.

115 The Court. You want to offer it in evidence?

Mr. Blackwell. Yes.

The Court. Is there any objection?

Mr. Burke. No, I have no objection.

(The second page of the physician's report of the D. C. Jail was received in evidence as Defendant's Exhibit No. 1.)

By Mr. Blackwell.

Q. Read it to the jury.

A. Read the second page?

Q. Yes, please.

A. The whole page?

Q. Not necessarily. All I want is the statement made there by the defendant, Andrew Upshaw, relative to his having been beaten by police officers.

A. Just Upshaw's statement?

Q. That is correct, sir.

A. This statement is:

"I was mistreated or manhandled by the police during my stay at Police Headquarters or any police precinct":

That is typed on there.

I might explain that is typed on all of these because we have so many cases of this type. Written on there is, "Beaten at No. 10 Precinct; 6-6-47. Punched and kicked in stomach and chest and side of face and head."

116 That is signed "Andrew Upshaw".

Q. That statement was made when, sir?

A. June 12, 1947.

Mr. Blackwell. Very well. Thank you, sir. That is all.

Cross-Examination by Mr. Burke.

Q. Mr. Stokes, this is a routine record that you make of cases of prisoners received at the jail, isn't it?

A. That is correct. In fact, I might explain the doctor has this typed on all of them because the majority of them make the statement—

Mr. BLACKWELL. (interposing) I objection to that statement.

The COURT. No, I think that is competent. As a matter of fact, if I had seen this before or if I had looked at it on objection, if there was objection, I don't see how I could have received it at all, Mr. Blackwell. A man cannot corroborate himself by his own statement.

Mr. BLACKWELL. Your Honor, this is introduced for the purpose of showing that, after this man was admitted to the D. C. Jail and before he consulted counsel, he said the same thing he said today, that he was beaten by the police officers.

The COURT. I understand. I doubt very much if it would have been admissible, but there was no objection and I did not bother to look at it. However, since that is what
117 you want to establish, I think the witness can say what he was about to say bearing upon its weight and value.

Mr. BLACKWELL. Very well; your Honor.

The COURT. Go ahead, Mr. Witness.

The WITNESS. We have so many complaints that we have this typed on all reports and the doctor permits the man to make the statement under the heading of "Remarks", whether he was or whether he was not, or whether he claims he was or was not beaten, and then the doctor makes his remarks.

By Mr. BURKE.

Q. The doctor attempts to determine from the prisoner's condition whether there is any evidence of that sort, doesn't he?

A. That is correct.

Q. Did the doctor attempt to do that in this case?

A. He did. He made a notation, "No bruises noted at time of examination".

Q. No bruises. Did he examine the man's ears for possible rupture of the eardrum?

A. He did.

Q. What was the report of that, sir?

A. They were negative.

Q. And injuries to the nose and mouth, throat?

A. Eyes were negative; nose was negative; throat, mouth, negative; neck, negative. In fact, he made
118 these remarks, "Normal development; well nourished".

Q. What was the doctor's finding as to the general physical condition?

A. "Normally developed and well nourished".

Mr. BLACKWELL. I didn't get the last statement.

The WITNESS. Normally developed and well nourished.

Mr. BLACKWELL. Normally developed and well nourished?

The WITNESS. That is under "General appearance".

By Mr. BURKE.

Q. Did the doctor make any finding of contusion, recent scars, bruises, or evidence of recent bleeding, and if he did would he have entered that in that report?

A. He would.

Q. Does it show there that the prisoner complained of recent bleeding?

A. I didn't get that.

Q. Does it show that the prisoner complained of recent bleeding?

A. Bleeding?

Q. Yes.

A. No, he doesn't say anything about bleeding.

Mr. BURKE. That is all.

Re-direct Examination by Mr. BLACKWELL.

Q. Mr. Stokes, when was that report taken?

119 A. June 12.

Q. When did the defendant state that he was beaten?

A. June 6.

Q. And it was six days after?

A. That is true.

Mr. BLACKWELL. Very well. That is all.

The COURT. That is all.

(Witness excused.)

Mr. BLACKWELL. Mrs. Pearce, please.

Thereupon—

HARRIETT H. PEARCE, was called as a witness by the Defendant and, having been previously duly sworn, resumed the stand and testified as follows:

Direct Examination by Mr. BLACKWELL.

Q. Mrs. Pearce, you testified in this case of Andrew Upshaw, yesterday, did you not?

A. I did.

Q. Of course, you testified under oath as all the other witnesses did.

A. Yes, I did.

Q. You testified under oath that your watch was taken on May 1, 1947?

A. That is right. I did not miss it on that date. I
120 missed it on May 3.

Q. But your testimony, in support of the indictment which sets forth the watch was stolen on May 1, was that it was stolen on May 3?

Mr. Burke. I object to that statement.

The Court. I sustain the objection. Mrs. Pearce did not say that her watch was stolen on May 1. She said that she did not miss it until Saturday. That would be the third, is that right?

The Witness. That is right, May third.

Mr. Blackwell. If your Honor please, the indictment alleges that the watch was stolen—

The Court. The indictment alleges that the watch was stolen on or about the first of May, as I recall, doesn't it? Let me see the indictment.

(The indictment was handed to the Court.)

The Court. "On, to-wit", which means on or about May 1, but, in any event, Mrs. Pearce did not say it was stolen on May 1. She said she missed it on Saturday which would be the third. I do not think it is fair to so characterize her testimony.

By Mr. Blackwell.

Q. Mrs. Pearce, your statement that the watch was stolen is based on the statement made to you by the defendant, is that correct?

121 A. Well, I said that I missed my watch on May third.

Q. Yes, I understand when you first missed this watch, the reason you did not report it for two weeks was because you thought the watch might show up and that you had not used the watch.

A. My husband had a slip placed in the pawnbrokers' file to see.

Q. You didn't tell us that yesterday, did you?

A. No, I did not.

Q. When did you get that information, overnight?

A. No, I did not. I knew that from the beginning.

Q. But you didn't mention that yesterday?

A. No, I did not.

Q. What is this about the pawnbroker?

A. The following Monday morning, my husband had that notice placed in the pawnbrokers' reports wherever they check up to see if anything is turned in to a pawnbroker.

Q. So your testimony yesterday was that you thought the watch was probably mislaid and you didn't want to wrongfully accuse anyone.

A. That is right. I didn't want to wrongfully accuse anyone of taking my watch until I knew positively that it could not be found.

Q. But the thing that convinced you that this watch was stolen was Andrew Upshaw's statement on Saturday, the third, was it not?

122 A. Yes, because he told me definitely the same spot in which I had placed my watch.

Q. The same spot?

A. Yes, he told me exactly where the watch was.

Q. Isn't it a fact he told you the watch fell out of the drawer?

A. He said it was in the drawer that I put it in and it fell out of that drawer when the vanity swayed forward.

Q. Of course, you had given a description to the police department concerning where the watch was stolen, had you not?

A. I suppose I did. I don't remember whether I told them exactly where it was stolen from. I told the police detective where I had put the watch.

Q. Who made the report, you or your husband?

A. I made the report myself. He reported it to the precinct, but I talked to the detective when he came to the house to interview me.

Q. As a police captain, it is reasonable to assume, is it not, that he made a report where the watch was located in the house at the time it was taken?

Mr. Burke. I object to the statement. I object to the inference that this case is different from any other.

The Court. I sustain the objection. I don't want

123 any witness in this courtroom to assume anything.

By Mr. Blackwell.

Q. Mrs. Pearce, I understand in talking to the police officers, you did give them information as to the whereabouts in the house where the watch was located?

A. I did tell him where I put the watch.

Q. You were in court this morning, Mrs. Pearce, were you not, when the prosecutor here read off a list of crimes the defendant has served time for?

A. He was reading them when I entered the room.

Q. By the way, did you know he had a criminal record prior to your coming here?

A. Prior to my coming here?

Q. Yes. Did the police officers tell you he had a criminal record?

A. Yes.

The Court. You mean prior to her coming here to testify?

Mr. Blackwell. Yes.

By Mr. Blackwell.

Q. Then the police told you?

A. He told me of the five men who worked in my house that this defendant was the only one who had any record, and he was not able to interview him because he was locked up at the time.

Q. Fine. Thank you. Would the fact that this man had a criminal record have any bearing on his credibility as to whether he was telling the truth on that night or not?

Mr. Burke. I object to that question.

The Court. I sustain the objection.

Mr. Blackwell. That is all, Mrs. Pearce.

Just a minute.

By Mr. Blackwell.

Q. By the way, how many people do you say live in your house?

A. Just the three of us.

Q. The three of you?

A. But the party who lived there was not present at my home at the time the watch disappeared. She was out of the city.

Q. For how long?

A. She left the 26th, I believe, of March and she did not return until after this had been reported.

Q. Do you have any servants?

A. Any what?

Q. Any servants?

A. No, I do not.

Q. Do you have anyone to come in and do cleaning?

A. No, I do not.

Q. Do day's work?

A. No.

Mr. Blackwell. That is all.

Mr. Burke. That is all.

(Witness excused.)

Mr. Blackwell. That is the defendant's case, your Honor.

Mr. Burke. Is Officer Culpepper here?

Thereupon—

VERNON CULPEPPER, was recalled as a witness in rebuttal by the United States and, having been previously duly sworn, testified further as follows:

Direct Examination by Mr. BURKE.

Q. Officer Culpepper, while this man was in your custody, or while you observed him at the station, did you see him mistreated by any officer?

A. No, sir, I did not.

Q. Did you at any time observe him to be bleeding?

A. No, sir, he was not.

Q. Did you observe him to be in distress at any time?

A. Yes, sir.

Q. What occasion was that?

A. When he was first brought in there he was continually coughing and spitting. He said he couldn't get all the stuff out of his throat, he had bronchial trouble, or something. I don't recall just what it was, but I believe
126 it was bronchial trouble.

Q. Did you observe him to be raising blood at any time?

A. No, sir, I did not.

Q. When you returned the next day and received this statement in your box, did you show it to Upshaw?

A Yes, sir.

Q. Did you allow him to hold it?

A. Yes, sir, I did.

Q. What did he do with it while he was holding it?

A. He looked at it and handed it right back, and I said, "No, read it."

Q. He said what?

A. I handed it to him and I said, "Did you sign it?" He handed it back and I said, "No, read it, read it all and tell me if that is your signature, and is that what you told Detective Furr?"

Q. Did he tell you at this time that he would rather admit this statement than to receive more beatings?

A. No, sir, he did not.

Mr. BURKE. That is all.

Cross-examination by Mr. BLACKWELL.

Q. Officer, this statement starts out by saying, "Before making a statement, you are advised of your constitu-
127 tional right that you do not have to make this statement; that any such statement may be used against you in the event of a trial. Any statement made by you is

made of your own free will without any threats or promises being made to you and after being so informed"; and so forth.

Did you go over all of this before it was signed?

Mr. BURKE. I object to this. The witness was not present when the statement was signed and it is outside the scope of the direct.

By Mr. BLACKWELL.

Q. Did you ask the defendant about that before you asked the defendant about this signature?

Mr. BURKE. This witness did not witness the statement.

The COURT. He witnessed the statement in the sense that he signed it.

Mr. BURKE. No, your Honor, he signed it in front of Officer Furr.

Mr. BLACKWELL. His name is on there the same as that of Officer Furr.

The COURT. He explained when he showed it to Upshaw about two o'clock in the afternoon that he asked him about it and the witness then signed it.

You may ask him.

By Mr. BLACKWELL.

Q. You understand my question?

128 A. No, sir, I do not.

Q. You heard me read a paragraph here at the beginning of this statement, which you usually put in all your statements, I take it, about advising the defendant about his constitutional rights and that this statement may be used against him and he does not have to sign it unless he sees fit to do so, and then you ask him if he wants to make the statement.

Did you question him concerning that before he admitted this was his statement?

A. No, sir, I did not.

Q. You didn't give him any such advice?

A. I let him read the whole paper. I knew he had attended high school. I took a statement from him on the previous night when we were making a line-up on him. I knew he was educated enough to know he would know what was meant.

Q. Did he tell you he had a college education?

A. No, sir, he did not. He told me he had two years of high school.

Q. Did you beat this man?

A. No, sir, I did not.

Q. Did you see any other officer beat him?

A. No, sir, I did not.

Q. If you had beaten him or had seen any other officer beat him, would you tell us here today?

129 A. I think I would.

Mr. BLACKWELL. That is all.

The COURT. That is all.

(Witness excused.)

Mr. BURKE. Mr. Furr, please.

Thereupon—

LLOYD FURR, was recalled as a witness in rebuttal by the United States and, having been previously duly sworn, testified further as follows:

Direct Examination by Mr. BURKE.

Q. Mr. Furr, at any time when this man was in your custody, did you mistreat him?

A. I did not.

Q. Did you observe him to be bleeding at any time while he was in your custody?

A. I did not.

Q. Did you observe any other officer mistreat this man?

A. No, sir.

Q. Before this typewritten statement was prepared, was there any occasion to do any handwriting, to take down notes or prepare any handwriting?

A. No, I typed the statement from him on the typewriter directly.

130 Q. Was anything that was said put on a paper in handwriting before it was put on in the typewriter?

A. Not the morning of the statement.

Q. Not the morning the statement was made?

A. That is right.

Q. What handwriting was prepared at any other time?

A. The only handwriting I will take of any prisoner is the name, address where he works, and so forth, to verify his story as to his job, where he has worked, and so forth.

Q. Did you write that information down?

A. I did.

Q. While he gave it to you?

A. Right.

Q. Was that the usual question there taken of every prisoner?

A. They are just notes on a scratch pad.

Q. Then what do you do with that information?

A. We use that to check, to verify any statement the prisoner might make as to his job and age, address, and so forth.

Q. Was he in the cell block at the time you took down that information, or what part of the station house was he in?

A. He was in the precinct detectives' room.

Q. In the detective room?

A. That is right.

131 Q. Did you take down any notes in handwriting while he was in the cell block?

A. I did not.

Q. You say the occasion when you took down this information in handwriting as to his personal history was the day before this statement was taken, this written statement?

A. That is right.

Q. And that he dictated this to you and you typed it without writing or making notes on it, is that right?

A. That is right.

Q. Had you been to this house before this statement was prepared?

A. Only on the night of the arrest, that is all.

Q. I mean to the address of Mrs. Pearce?

A. No, I had not.

Q. Did you know anything about the interior of that house?

A. Not a thing.

Mr. BURKE. That is all.

Cross-examination by Mr. BLACKWELL.

Q. Officer, did you ask the defendant if he could read and write?

A. I did.

Q. Did you ask him how far in school he went?

132 A. I did. I recall him telling me he had gone to high school. Just how far, I don't know.

Q. Did you request him to write out the statement in his own handwriting concerning this confession?

A. I did not.

Q. And you deny that you beat the defendant?

A. Definitely.

Q. Officer, you checked the defendant's record. There came a time that you checked the defendant's record, did you not?

A. I did not.

Q. Did you receive any information from your partner as to whether the record had been checked?

A. None whatsoever.

Q. Then when was the first time you ascertained that this defendant had a criminal record?

A. Just when Mr. Burke read it this morning.

Q. Just this morning?

A. I did know, however, he had been in Occoquan for a drunk charge. I knew he was down there at the time we were waiting for him.

Q. Officer, you and Officer Culpepper are what are known as partners, are you not?

A. That is correct.

Q. You mean you prepared this case—

133 The Court. You ought to be able to speak louder than you do. I can't hear you, sir.

Mr. Blackwell. He said they were partners.

By Mr. Blackwell.

Q. Mr. Furr, do you mean to tell His Honor and this jury you never knew this man had a criminal record until you came into the court today other than one for intoxication?

A. I had no occasion to check his record.

Q. Do you know whether Mr. Culpepper checked it or not?

A. I don't know. Not to my knowledge.

Q. If you know, how did the prosecutor get that record?

A. I don't know.

Mr. Burke. I object. That is ordinary routine procedure and the attempt is to make it look as if this officer supplied us with information that we get as a matter of course every time an indictment is returned from the police department with which he has no connection.

Mr. Blackwell. I understand in the preparing of a case the arresting officer is supposed to get the defendant's record.

The Court. I don't know whether he is or not, but I can take judicial notice and I also have personal knowledge that in every case in which an indictment is returned, the Record Clerk of the Police Department is asked for whatever information, if any, they have on past offenses, always.

134 Mr. Blackwell. Will your Honor also take judicial notice of the fact that when this man came in to police court before any Judge would set bond in this case, they requested the arresting officer for his record?

The Court. I can't do that because I don't know that is a routine practice.

Mr. Blackwell. Would I be permitted to ask this officer whether that is the practice?

The Court. I don't see the theory of it.

Mr. Blackwell. This is for the purpose of impeaching this officer, to show he must have known something about this man's record.

The Court. If it is that, then I am questioning the materiality of it. What difference does it make to the issues here whether he knew it or he did not?

Mr. Blackwell. It is very material, your Honor, inasmuch as Mrs. Pearce testified that four of the men who worked there did not have a criminal record and this was the only man who had a criminal record.

The Court. I recall she did so testify, without naming the officer. However, you may ask.

By Mr. Blackwell.

Q. Mr. Furr, isn't it a routine method in the Police Department where you bring a prisoner to court for a preliminary hearing to be held for the purpose of ascertain-
135 ing the amount of bond, to supply the Court with the record of the defendant if he has one?

A. That is right. The arresting officer usually checks his record and brings it to court.

Q. Weren't you the arresting officer?

A. I was not.

Q. Who was?

A. Officer Culpepper.

Q. You deny you beat this defendant?

A. That is correct.

Q. He came in and denied it, is that correct?

A. That is correct.

Q. And he denied it on another occasion, is that right?

A. That is right.

Q. And there came a time when he decided to admit it?

A. Yes, sir.

Q. What happened in the interval between the time he was arrested and the time he confessed? Did anything unusual happen to this defendant?

A. No, sir.

Q. It was more than 24 hours after he was arrested before he confessed?

A. Yes, sir.

Q. There was no mistreatment on your part?

A. No, sir, not to my knowledge.

136 Q. You saw no one else mistreat him?

A. No, sir.

Q. If you had mistreated him or had seen anyone else mistreat him, you would so testify today, is that right?

A. That is right.

Mr. Blackwell. That is all.

The Court. That is all.

(Witness excused.)

Mr. Blackwell. I don't like to take up too much time,

but I would like to ask Officer Culpepper, the arresting officer, one question.

The COURT. All right. Come around, Officer.

Thereupon—

VERNON CULPEPPER resumed the stand and testified further as follows:

Further Cross-examination by Mr. BLACKWELL.

Q. Officer Culpepper, you are the arresting officer in this case, is that correct?

A. Yes, sir.

Q. Did you check the record of this defendant prior to bringing him to Police Court for arraignment that morning?

A. I did, sir.

Q. How soon before then was it before you checked the record?

137 A. I checked his record along with all of the other men who were in Mrs. Pearce's house.

Q. You did have a conversation with Mrs. Pearce to the effect that, of all the five men, this was the only man with a criminal record, is that correct?

A. That isn't entirely correct. There was a conversation relative to that. Mrs. Pearce and Mr. Pearce thought another man took the watch.

Q. Pardon me?

A. They thought one of the other men took the watch. I told them, after talking to that man, I was satisfied that he did not take it and that the most logical man, in my estimation, was Andrew Upshaw. He didn't report to work the following day. He had a criminal record as being a thief prior to that.

I told Mrs. Pearce that, yes.

Q. So your testimony is that Mr. and Mrs. Pearce suspected some other man, one of the men who worked one of the days after this man?

A. That is right.

Q. And you informed them that man did not have a criminal record but this man had a criminal record and was the logical man, is that your statement?

A. No; you are turning my statement around. I told them I was satisfied the man they suspected did not

138 take the watch. He had worked for years for the American Cleaning Company. This man had not worked long. He had a poor record. He did not report back the following day and, to me, that indicated there was

some reason for that, so, consequently, I suspected this man.

This man was locked up at that time and I could not question him.

Q. You checked the records of the other men as to the length of time they had worked there?

A. I did, sir.

Q. Did you check this man's record to see whether or not he worked there the following week?

A. Yes, sir, I did.

Q. What was the report?

A. They told me he had not.

Q. They told you that at the company?

A. No, sir.

Q. Pardon me?

A. I said "No, sir". I called up there and they told me he did not report the following day, that he did not work the following day. He was working on the fire at the complainant's house. They told me he did not work the next day.

Mr. BURKE. Just a moment, Officer. I am objecting to this. Counsel is bringing out a lot of hearsay. If he
139 wants it brought out, that is all right. I am not objecting to it, but this is hearsay and I don't vouch for it at all.

The COURT. I understand.

Mr. BLACKWELL. I did not ask for hearsay.

The COURT. It is inevitable that you are going to get it. That is the trouble. A responsive answer is just bound to bring it out, but if you want it, it is all right with me.

Mr. BLACKWELL. I will reframe the question, and I hope the officer will give a responsive answer.

By Mr. BLACKWELL.

Q. Officer, did you or did you not check with the American Window Cleaning Company to ascertain whether or not the defendant, Upshaw, worked there the following week?

Answer yes or no.

A. No.

Mr. BLACKWELL. That is all.

The COURT. That is all.

(Witness excused.)

The COURT. We will take a short recess at this time.

(Thereupon, a short recess was taken.)

Mr. BLACKWELL. If your Honor please, may we approach the bench?

The COURT. Yes.

(Thereupon, counsel approached the bench and the following proceedings were had out of the hearing of
140 the jury:)

Motion for Judgment of Acquittal

Mr. BLACKWELL. If your Honor please, I wish to make a motion for a judgment for acquittal of this case on the ground that surely there is not sufficient evidence for this case to go to the jury. The evidence is so conflicting. We have only a confession in this case which the complaining witness doubts certain portions of herself.

The COURT. What she said she believed was that if the defendant, by accident, knocked the vanity over and the watch fell on the floor and he stepped on it and, therefore, took it away to have it repaired, that she would have heard it if that happened.

I do not think that is reason enough. I think I will have to tell the jury, if they believe the evidence was obtained by coercion, then there is nothing left in the case. I think that is true.

I don't think you have enough evidence in the case without the confession for the jury, do you?

Mr. BURKE. There is some evidence but not enough.

Mr. BLACKWELL. If your Honor please, we have also raised the question as to the validity of the confession, and I also think we should get a judgment for acquittal because the confession is not a valid confession inasmuch as the defendant was held an unreasonable period of time.

The COURT. I thought about that overnight. I
141 think that it was not unreasonable under the circumstances as a matter of law, and I will, therefore, deny the motion for a judgment of acquittal and leave to the jury the question of fact as to whether the confession was extracted by force and, therefore, unreliable and invalid, and instruct them if they believe it was, then they must find a verdict of not guilty because of insufficient evidence without the confession.

Mr. BLACKWELL. Very well, your Honor.

Motion for Directed Verdict

I then make a motion for a directed verdict as to grand larceny. The most it should be is larceny, for there has been no evidence as to the value of the watch. The watch was purchased in 1944 and I think the most it could be would be petit larceny.

The COURT. I will deny that motion as well, because I think there is ample evidence to support the value of the watch.

Mr. BLACKWELL. Very well, your Honor.

(Thereupon, counsel resumed their places at the counsel table and the following proceedings were had in open court:)

(Mr. Burke summed up to the jury in behalf of the United States.)

(Mr. Blackwell summed up to the jury in behalf of the defendant.)

142 *Charge to the Jury*

The COURT (Schweinhaut, J.): Ladies and gentlemen, I am going to instruct you very briefly because all of you have served a number of times before. Also, the hour is growing late and, incidentally, I have asked the Marshal to take you to luncheon before you consider this case, but I want to instruct you now because I have some other business I must transact.

First, I remind you that the indictment is not evidence and you are not to consider it as anything but an accusation. It is the means by which the matter is brought before you in order that you may determine the guilt or innocence of the accused.

In criminal cases, the defendant is presumed to be innocent of the crime charged against him and that presumption remains with him, and it prevails unless you are satisfied of his guilt beyond a reasonable doubt, because the burden is upon the Government always to establish guilt, never upon the defendant to establish innocence.

I have defined reasonable doubt for you so many times that that is not necessary to repeat. You keep it in mind, however, in your consideration of this case.

Also, I remind you that if you find that the evidence in the case, not speculation or guess or conjecture, but if the evidence in the case, after you have considered it and
143 weighed it, and after you have exercised your reasoning powers, you then believe that the evidence equally supports a hypothesis of innocence as it does the hypothesis of guilt, then, of course, you must acquit, and if, in evaluating the testimony of anyone in the case, you come to the conclusion that he has testified falsely concerning a matter as to which he could not reasonably be mistaken, you may disregard all or any part of the testimony of any such person.

The defendant here has testified in his own behalf and was shown to have been convicted of prior and some of them similar offenses before. You are instructed that that is not evidence of guilt in this case. Evidence of prior convictions is received only as it may or may not, in your

opinion, bear upon the credibility of that individual as a witness.

Are you as willing to believe a person who has been convicted of crime as you are one who has hitherto lived a life free from conviction of crime, and it is for that limited purpose only that such evidence is received.

Here, as you have been properly told in arguments, the issue does boil down to a very narrow one. The defendant is charged with larceny and the evidence on the part of the Government, Mrs. Pearce and the two detectives, say that he admitted it, told them how he did it; that he knocked the vanity over, the drawer came open, the watch fell out and he stepped on it and broke it, and he sold it for $5 and some whisky. They say that he admitted it to them in the precinct first and then repeated it to
144 Mrs. Pearce at her home.

The defendant says that that is true, he did. He did say that, but he said that is not the truth. He says, "I confessed because I was beaten and I was afraid".

So then, if you believe that he did confess because he was beaten, you must, as a matter of law, disregard the confession. This case is such that without the confession there is insufficient evidence, and I could not permit a verdict to stand under such circumstances. So, if you believe that even though he confessed he did not do so voluntarily but because he was beaten, then your verdict can only be not guilty.

If you believe that he confessed because he was telling the truth and that that is the way it happened and that is what occurred, then it is clear, also, that your verdict can only be that of guilty.

So your consideration of the case actually boils down, as counsel on both sides have said to you, to whether or not this is a voluntary confession. If it was, he is guilty. If it wasn't, he is not guilty.

That is all there is to it.

The Marshal will take you to luncheon. Report back to the jury room immediately, not back to the courtroom, and do not discuss the case during your luncheon period.

(Thereupon, at 12:50 o'clock p. m., the jury retired from the courtroom for the luncheon recess and returned later to consider of their verdict.)

145 AFTERNOON SESSION

(The jury returned to their places in the jury box at 2:30 o'clock p. m., and the following proceedings were had:)

Verdict

The CLERK. Mr. Foreman, has the jury agreed upon a verdict?

The FOREMAN. It has.

The CLERK. What say you as to the defendant, Andrew Upshaw?

The FOREMAN. We find the defendant guilty.

The CLERK. Members of the jury, your Foreman says you find the defendant, Andrew Upshaw, guilty as indicted, and that is your verdict, so say you each and all?

(The jurors all nodded assent.)

Mr. BLACKWELL. If your Honor please, I request that the jury be polled.

The COURT. Yes; poll the jury.

The CLERK. Mrs. Elizabeth Burnett, what say you as to the defendant, Andrew Upshaw?

Juror BURNETT. Guilty.

The CLERK. Arthur E. Clement, what say you as to the defendant, Andrew Upshaw?

Juror CLEMENT. Guilty.

The CLERK. Charles F. Daughtry, what say you as to the defendant, Andrew Upshaw?

146 Juror DAUGHTRY. Guilty.

The CLERK. Bernhard Goldberg, what say you as to the defendant, Andrew Upshaw?

Juror GOLDBERG. Guilty.

The CLERK. Benjamin Green, what say you as to the defendant, Andrew Upshaw?

Juror GREEN. Guilty.

The CLERK. John A. Haight, what say you as to the defendant, Andrew Upshaw?

Juror HAIGHT. Guilty.

The CLERK. Harry M. Howard, what say you as to the defendant, Andrew Upshaw?

Juror HOWARD. Guilty.

The CLERK. William D. Mooney, what say you as to the defendant, Andrew Upshaw?

Juror MOONEY. Guilty.

The CLERK. Janice O'Donnell, what say you as to the defendant, Andrew Upshaw?

Juror O'DONNELL. Guilty.

The CLERK. Harry G. Pennington, what say you as to the defendant, Andrew Upshaw?

Juror PENNINGTON. Guilty.

The CLERK. Robert E. Sheahan, what say you as to the defendant, Andrew Upshaw?

Juror SHEAHAN. Guilty.

147 The CLERK. Mrs. Margaret Sims, what say you as to the defendant, Andrew Upshaw?

Juror SIMS. Guilty.

(Thereupon, the jury was excused.)

The COURT. Mr. Blackwell, I normally refer these cases for investigation. I am rather inclined to impose a sentence in this case now. One reason is that I believe I know all I need to know, and the other reason is that I will be away.

What do you have to say?

Mr. BLACKWELL. I plan to file a motion for a new trial. Of course, if your Honor feels that it will be useless then I won't take the time in that respect.

The COURT. I can never say in advance it will be useless. I know the points you have raised. I do not agree with you, but I can be wrong about them.

I think the only thing of any consequence at all that you have presented to me, as a matter of law, is the time that he was held. The evidence convinced me of his guilt beyond any doubt, but you may have a point there, and since I will not be here and since I am sure that you feel you have really got a point, I think the only thing I can do is to admit him to bail, and perhaps I should do that.

I am a little fearful of it, frankly, but what do you think?

Mr. BLACKWELL. I don't know whether he could
148 make bond or not, your Honor. However, I think it would be well if you would set a bond in case he can.

The COURT. The important thing is that no other Judge can pass on a motion for a new trial.

Mr. BLACKWELL. No, I am sure if wouldn't be fair for another Judge to do that.

The COURT. And if you are going to the Court of Appeals on it, then there is no real problem, because I will set the bail and he is not punished in case I am wrong on the law because he is being held during my absence from the city.

Mr. BLACKWELL. Suppose you set bond, your Honor, and in case he can make bond we will try to get him out on bond, because I do think it is a good legal question, the time element. I think it comes right in the teeth of some of the decisions.

The COURT. I know you do, and while I don't agree with you, I do not say that I am right. I have already ruled that you are not but I can be wrong about that and you can be wrong. But for the confession I would have been compelled to take the case from the jury, and I think he is entitled to go to the Court of Appeals if he wants to do it, and he should not be punished by virtue of my absence.

Will you suggest a bond?

Mr. Blackwell. Your Honor, the defendant does have a record.

The Court. He has a record and he apparently
149 hasn't much of a work record. That is what troubles me about it.

Have you seen this record?

Mr. Blackwell. I just noticed it from a distance, but I understand most of it is disorderly conduct.

The Court. Most of it is ten-cent store stuff, drunk, and that kind of thing; assault, petit larceny, housebreaking, two housebreakings, nolled, and all that business, but no man who behaves himself gets three pages of this sort of stuff.

Mr. Blackwell. I concede, your Honor, he has a bad record. However, it has been my contention that the record in this case is because of this alleged confession.

The Court. This kind of a record indicates just a worthless man. As I say, practically all of this is drunk and disorderly, and that kind of thing.

Mr. Blackwell. I understand he is practically penniless. He has informed me he can get money from his people in Alabama. Of course, he has not been able to make bond and I was assigned by the Court.

The Court. I know your point so thoroughly; can't you make a verbal motion for a new trial right now? You are going to make it based on the same points that you have argued to me before, aren't you?

Mr. Blackwell. If your Honor sees fit, I will state that my motion for a new trial would be substantially the
150 same as my motion to exclude the confession.

The Court. Yes, and on the ground that I should have taken the case from the jury.

Mr. Blackwell. That is right.

The Court. Just as you made it at the close of the Government's case and at the close of your case.

Mr. Blackwell. Yes. I pointed out at that time the man had been unreasonably detained. He was arrested at two o'clock and he was questioned continuously, I should say, at intervals.

The Court. I am just as convinced as anyone could be that I would deny it if I heard you at length, because I am familiar with the cases, the McNabb case, the Akowsky, the Mitchell and Boone cases, which came from our Court and others. I guess I am as familiar with them as I am with anything, and I just do not agree with you, so I do not believe there is much sense in going through the motions of arguing that again, because you have done it twice already.

Order Denying Motion for New Trial

Therefore, I will deny the motion for a new trial, and I am going to impose a sentence now, but I will fix bail because, if you want to go to the Court of Appeals, he should not be kept in jail for want of bail because I won't be here.

Mr. BLACKWELL. Very well, your Honor.

Sentence

The COURT. The sentence of the Court is that you
151 serve term of 16 months to four years.

What do you say as to bail?

Mr. BLACKWELL. Your Honor, I would like to suggest $500, inasmuch as he is most likely to get that. However, I think $1,000—

The COURT. It is after conviction now, too, you see.

Mr. BLACKWELL. I would suggest $1,000, your Honor.

Mr. MOLENOF. The bond, as originally set, was $1,000 and in view of his record and his present conviction, I would set a higher bond of, I would say, $2,000 in this particular case, especially in view of the fact that his record shows he is a drifter and is not reliable.

The COURT. I did the same thing in another case this morning. That is what I was going to do.

I will fix the amount of the bond in the amount of $2,000.

That is all.

(Thereupon, at 2:40 o'clock, the hearing was closed.)

Certificate of Official Reporter

I, JEANETTE RAWLS, an official reporter of the District Court of the United States for the District of Columbia, hereby certify that the foregoing is the official transcript of a portion of the testimony and proceedings in the above entitled cause in said Court.

JEANETTE RAWLS,
Official Reporter.

152 *Government's Exhibit No. 1*

Tenth Precinct Criminal No. 628-47

METROPOLITAN POLICE DEPARTMENT
Washington, D. C.

7th June, 1947

STATEMENT OF: Andrew Upshaw AGE: 34 yrs. COLOR: Black.
ADDRESS: 1533 8th St. N. W.

Filed
Oct 13 1947

YOU ARE REQUESTED TO MAKE A STATEMENT RELATIVE TO THE Larceny of a wrist watch from 4023 Ill. Ave. N. W. Property of W. R. Pierce.

Before making a statement you are advised of your constitutional rights: that you do not have to make a statement; that any such statement may be used against you in the event of a trial; that any statement made by you is made of your own free will, without any threats or promises being made to you. After being so informed, do you wish to make a statement? Answer: Yes.

By Officer: Lloyd B. Furr, 10th Pct. Can you read and write? Answer: Yes.

STATEMENT: While we (Fat Head) were cleaning at Capt. Pierce's House at 4023 Ill. Ave. N. W. and cleaning the bedroom on the second floor. I was moving the dresser and it tipped over and the drawer fell open and the wrist watch, a ladies I think a white gold one, fell on the floor, as I tryed to catch the dresser I stepped on the watch, breaking the crystal. I became scared and decided to take the watch with me and that night have it repaired and return same the following day. In that way I figured the people would know I had broken it. At that time I did not know it was a Police Captains House.

That evening I went to the Office and borrowed some money, but by the time I got down town all the repair places were closed. I then went into a restaurant at 7th and Tee St N. W. and took a booth by my self. A few minutes later two men and a girl came in and asked me to share my booth with them. I did not know these people and I hadn't seen them before. I talked them a few minutes and had decided to sell the watch and try to lie my way out of it. I asked one of the men if he wanted a watch, telling him it was my girl friend'd watch and that we had broken up and I wanted to sell it. I told him he could have it for $5.00 and a pint of whiskey. The watch was still running although the crystal was broken. The man sent the other fellow out for the whiskey and he returned with it and they gave me same along with $5.00.

I may know the people if I see them again, but I was drinking and I can't remember what they looked like.

I would like to pay Capt. Pierce for the watch, letting him take half of my pay until its payed for.

ANDREW UPSHAW.
Andrew Upshaw.

WITNESSES:
Lloyd Furr
LLOYD B. FURR, MP #10.
Vernon H. Culpepper
VERNON H. CULPEPPER, MP #10.

153 District Court of the United States
for the District of Columbia
Holding a Criminal Term.
(File Endorsement Omitted)

April Term, A. D. 1947

Indictment Filed June 6, 1947.

District of Columbia, ss:

The Grand Jurors of the United States of America, in and for the District of Columbia, aforesaid, upon their oath, do present:

That one Andrew Upshaw, on, to wit, May 1, 1947, ... and at the District of Columbia aforesaid, one watch, of the value of one hundred and thirty-five dollars, ... of the goods, chattels, and property of Harriett H. Pearce then and there being found, feloniously did steal, take, and carry away; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

George Morris Fay
Attorney of the United States
in and for the District of Columbia.

A True Bill:
Robert C. Quinn,
Foreman.

154 In the District Court of the United States
for the District of Columbia
(Title Omitted)

Arraignment and Plea—June 20, 1947

Come as well the Attorney of the United States, as the defendant in proper person, in custody of the Superintendent of the Washington Asylum and Jail, whereupon the defendant being arraigned upon the indictment, the reading whereof he specifically waives, pleads not guilty thereto, and for trial puts himself upon the country and the Attorney of the United States doth the like.

155 In the District Court of the United States
for the District of Columbia

The Court Resumes its Session Pursuant to Adjournment:
Hon. HENRY A. SCHWEINHAUT, Presiding.

Criminal No. 628-47

UNITED STATES
vs.
ANDREW UPSHAW

Verdict; Denial of Motion for New Trial; Judgment, etc., July 29, 1947

Come again the parties aforesaid, in manner as aforesaid, and the same jury that was respited in this case yesterday; whereupon the said jury upon their oath say that the defendant is guilty in manner and form as charged in the indictment; and thereupon each and every member of the jury is asked if that is his verdict and each and every member thereof say that the defendant is guilty in manner and form as charged in the indictment; whereupon the defendant's oral motion for a new trial, coming on to be heard, after argument by the counsel, is by the Court denied; and thereupon it is demanded of the defendant what further he has to say why the sentence of the law should not be pronounced against him and he says nothing except as he has already said; whereupon it is considered by the Court that, for his said offense, the said defendant be committed to the custody of the Attorney General or his authorized representative for a period of Sixteen (16) months to Four (4) years; and thereupon the Court fixed the amount of bond in this case at Two Thousand ($2,000.00) Dollars pending appeal.

156 In the District Court of the United States
for the District of Columbia

(TITLE OMITTED)

(FILE ENDORSEMENT OMITTED)

Order Extending Time to File Record on Appeal

Filed Sept. 10, 1947

On consideration of the petition of defendant's attorney to have the time extended for filing the record on appeal, It is

ORDERED by the Court that the petition be and it is hereby, granted extending the time to file the record on appeal until the 16th day of October 1947.

ALEXANDER HOLTZOFF
Justice

157 CRIMINAL DOCKET

628-47

District Court of the United States
for the District of Columbia

PARTIES	ATTORNEYS	CRIMINAL No.
UNITED STATES	U. S. Attorney	
vs.		628-47
ANDREW UPSHAW	JOEL BLACKWELL	

Charge:
Grand Larceny

Bond:
1. $
2. $
3. $
4. $
5. $
6. $

G. J. No. 703-47

DATE	PROCEEDINGS
1947 Jun 16	Presentment and Indictment filed
20	Arraigned, Plea not guilty entered (M 127)
27	Case referred for appointment of counsel.
27	Order appointing Joel Blackwell, attorney to defend, filed (See Order) (M 142)
July 28	Jury sworn and respited until tomorrow. (M 142)
29	Trial resumed, same jury; Verdict Guilty as indicted. Jury polled.
	Order for food issued.
	Oral motion for new trial heard and denied.
	Sentenced to imprisonment for a period of Sixteen (16) months to four (4) years. (JUDGMENT SIGNED) (SCHWEINHAUT, *J.*) (M 142)
29	Bond pending appeal fixed by Court at $2000.00 (Schweinhaut, *J.*) (M 142)
Aug 7	Affidavit *in Forma Pauperis* & Order filed (Curran, *J.*)
	Notice of Appeal *in forma pauperis* filed (M 142)
18	Designation of record, filed.
Sep 10	Petition to Extend Time to File Record on Appeal, filed. Order Extending Time to

and including 10/16/47 to File Record on Appeal; filed. (Holtzoff, *J.*). (See Order) (M 144)

Oct 1 Transcript of Proceedings of 7-28-47 Pages 1-92 filed. Transcript of Proceedings of 7-29-47 Pages 93-151 filed.

" 8 Transcript of Proceedings, Vol. 1 and 2; Pages 1-151—filed.

13 Statement of Andrew Upshaw, Government Exhibit #1.

158 In the District Court of the United States
for the District of Columbia

(TITLE OMITTED)

(FILE ENDORSEMENT OMITTED)

Designation of Record

Filed Aug. 18, 1947

The defendant designates for inclusion in the record on appeal in this court the following:

1. Indictment
2. The Verdict of the Jury and the Sentence of the Court
3. The Docket and Minute entries
4. The Notice of Appeal
5. The Statement of errors claimed
6. The Exhibits introduced by both parties
7. The Transcript of Testimony
8. The Court's Instructions
9. This Designation
10. The Certificate of the clerk

Joel D. Blackwell
JOEL D. BLACKWELL
Attorney for Defendant

I hereby certify that a copy of the above Designation of Record was served on Mr. Burke Asst. U. S. District Attorney for the District of Columbia this 18th day of August 1947.

Joel D. Blackwell
JOEL D. BLACKWELL

159 Clerk's Certificate to foregoing transcript omitted in printing.

2

160 In the United States Court of Appeals
for the District of Columbia

(File Endorsement Omitted)

No. 9621

Andrew Upshaw, Appellant,

v.

United States of America, Appellee.

Confession of Error and Motion to Remand—Filed Nov. 5, 1947

Comes now the United States, by its attorney the United States Attorney, and confesses error in the trial of this case and for that reason moves that it be remanded to the District Court with directions to vacate the judgment and enter a judgment of acquittal.

This motion is made for the reason that in the opinion of appellee appellant's confession was inadmissible. In view of the responsibility of this Court to examine the whole record before setting aside a conviction for crime, however, the salient facts are set forth below. See *Parlton* v. *United States*, 64 App. D. C. 169, 75 F. (2d) 772 (1935).

Appellant was indicted and convicted of grand larceny of a watch. His trial was conducted on July 29, 1947, when he was sentenced to a term of 16-48 months. Bond pending appeal was fixed in the amount of $2,000, but appellant did not make bond.

On Thursday, May 1, 1947, appellant, an employee of a window-cleaning company, worked with another man house-cleaning at the home of the complaining witness. He failed to report for work on May 2 and 3, although four other employees of the company worked at the complaining witness's home on these days (R. Set. Seq.). Appellant was

161 known to have been in the complaining witness's bedroom and all the men had access to all parts of the house. (R. 8.)

On Thursday morning, before appellant and his co-workers arrived, the complaining witness placed her watch in the drawer of a heavy vanity in her bedroom (R. 6, 7). The discovery that the watch was missing was made during the evening of Saturday, May 3. The loss was reported to the police about ten days later (R. 9, 42), after the witness became satisfied that the watch was not merely misplaced (R. 41).

After the report was made, the four men who had worked at the complaining witness's house were questioned and eliminated as suspects (R. 42). At this time appellant was

serving a 20 day sentence for intoxication imposed about May 10 (R. 24, 86). Officer Culpepper left his card at appellant's home with a request that appellant call him (R. 86). The officer did not hear from him, however, although appellant testified he made unsuccessful efforts to contact the officer (R. 78, 86, 95).

According to the officers' events then transpired as follows:

Friday, June 6, 2 A. M.	Appellant arrested at his room, 1533 8th Street, N. W., by Detectives Furr and Culpepper (R. 18, 30). Appellant taken to No. 10 Precinct, questioned for not over 30 minutes (R. 19, 30). Continuous coughing by appellant interfered with questioning (R. 24). Some indication he had been drinking (R. 55). Guilt denied (R. 50).
9 or 10 A. M.	Appellant questioned by Furr apparently for short time. Denied guilt (R. 31). Appellant not arraigned because, as officer frankly stated he felt case was insufficient "to have the Police Court hold him, and if the Police Court did hold him we would lose custody of him and I no longer would be able to question him." (R. 27).
11 A. M.	Appellant questioned by Culpepper for short time through bars in cell block at No. 10. Coughed some but not so as to interfere with questioning (R. 20, 25).
5:30 P. M.	Appellant questioned by Culpepper for short time through the bars in cell block. Guilt denied (R. 20).
7:30-8 P. M.	Appellant questioned by Furr. Guilt denied (R. 31). Appellant tried unsuccessfully to contact Culpepper to "tell him about it." (R. 70).
162 Saturday, June 7, 9 A. M.	Appellant admitted theft to Furr. Coughed a little bit (R. 56). Signed statement at 9:30 A. M. (R. 31, 50). Appellant not arraigned apparently because case had been assigned to Culpepper (R. 69).

2 P. M. — Culpepper read to appellant statement previously given and appellant acknowledged it (R. 21, 63).

9 P. M. — Appellant taken to complaining witness's home. Repeated confession (R. 25, 37, 64). Appeared calm, offered to pay for watch (R. 39, 46).

Monday, June 9 — Arraignment (R. 37).

Appellant took the stand and testified in substance that he confessed because he was beaten (R. 80). He stated he was beaten shortly after his arrest (R. 81), again at about 11 A. M. (R. 82), and a third time at about 3:30 P. M. when he confessed (R. 98). The record does not show that when he was taken to the jail on June 9, appellant made any complaint of having been beaten. On June 12, however, he did make such a complaint, but the doctor's examination revealed no injuries of the type appellant said he had received (R. 115).

Appellant admitted having gone to the first year of high school. He also admitted convictions in the District of Columbia for larceny in 1938, assault in 1937, and larceny after trust in Alabama in 1933 (R. 98, 99).

Appellant's written confession was introduced in evidence (R. 53, 152). With minor variations his confession was repeated orally by appellant in the presence of the complaining witness (R. 10, 38).

While Government counsel believe that the confession in this case was entirely voluntary and was true, it must be conceded that it was obtained under circumstances that render it inadmissible. *McNabb* v. *United States*, 318 U. S. 332 (1943).* The delay was unreasonable and the purpose of it, as stated by the officers themselves, was only to furnish an opportunity for further interrogation.
163 The interrogation was not extended and not coercive.

On the other hand, there was no need for repeated interrogation by reason of any additional evidence obtained by the police between questionings. Under these circumstances, it must be said that the delay in arraignment was not a delay merely, but a delay for purposes inimical to the letter and spirit of the rule requiring prompt arraignment.

The position taken by the Government in this matter is not intended in anywise to be a reflection upon the Police

* See also *United States* v. *Mitchell*, 322 U. S. 65 (1944); *Boone* v. *United States*, ... U. S. App. D. C. ....., No. 9503, decided November 3, 1947.

Department or any members thereof. On the contrary, it is apparent that the facts militating against the admission of the confession are known only because of the thoroughness and frankness of the officers involved in this case.

GEORGE MORRIS FAY,
United States Attorney

CHARLES B. MURRAY,
Assistant United States Attorney

JOHN P. BURKE,
Assistant United States Attorney

SIDNEY S. SACHS,
Assistant United States Attorney

Certificate of Service

I hereby certify this 5th day of November, 1947, that I have sent a copy of the foregoing Confession of Error and Motion to Remand to Joel Blackwell, Esquire, 512 5th Street, N. W., Washington, D. C., by official United States mail.

SIDNEY S. SACHS,
Assistant United States Attorney

164 In United States Court of Appeals
District of Columbia

(FILE ENDORSEMENT OMITTED)
No. 9621

ANDREW UPSHAW, APPELLANT
v.
UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the District of Columbia

Submitted November 26, 1947—Decided April 19, 1948

Mr. Joel D. Blackwell for appellant.

Messrs. George Morris Fay, United States Attorney, *John C. Conliff*, *Sidney S. Sachs*, and *John D. Lane*, Assistant United States Attorneys, for appellee.

Before: Edgerton, Clark and Wilbur K. Miller, *JJ.*

Opinion Filed April 19, 1948

WILBUR K. MILLER, *J.*: The appellant, Andrew Upshaw, was arrested at 2:00 a. m. on Friday, June 6, 1947, and shortly after 9:00 o'clock the next morning confessed to the theft for which he had been taken into custody. He was not taken before a committing magistrate until Monday, June 9. He appeals from the judgment of conviction entered against him pursuant to the verdict of a jury in

the District Court of the United States for the District of Columbia on a single ground which he states in his brief as being "that the defendant had been detained an unreasonable time after the arrest before the alleged confession was made."

The United States Attorney filed in this court a written confession of error and motion to remand for the reason that he believed the appellant's confession was inadmissible. In such circumstances it is the duty of the appellate court to examine the record and determine for itself whether there was prejudicial error.[1]

165 A confession voluntarily given is admissible in evidence. We do not read the *McNabb* and *Mitchell* cases, and the recent *Haley* case,[2] as holding otherwise. Conversely, of course, a confession involuntarily made is inadmissible.

It has long been held that a confession extorted by physical violence is involuntary and must not be received in evidence. When there is evidence both affirming and denying that force was used, the issue of fact so formed must be resolved by the jury. The *McNabb* case extends that established doctrine by pointing out the indisputable fact that coercion without physical brutality may extort a confession;[3] and that an admission so induced is involuntary. Specifically, it was there held that illegal detention, aggravated by undenied continuous questioning for five or six hours by half a dozen officers, amounted to such invalidating coercion as a matter of law.

The *Haley* case is to the same effect. Its facts were almost identical with the *McNabb* facts, except that Haley was a fifteen year old boy, presumably even more susceptible to the psychological pressure of continuous questioning for five hours by relays of policemen than were the more mature McNabbs.

It is important to note it was undisputed in the *McNabb* and *Haley* cases that long-continued questioning during illegal detention actually occurred. Had there been conflicting evidence on that score, it is safe to suppose the verdict of a properly instructed jury with respect to that

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[1] *Parlton* v. *United States*, 64 App. D. C. 169, 75 F. (2d) 772.

[2] *McNabb* v. *United States*, 318 U. S. 332; *Mitchell* v. *United States*, 322 U. S. 65; *Haley* v. *Ohio*, U. S. Sup. Ct., January 12, 1948 (No. 51, October Term).

[3] This was also an enlargement of the holding in *Ward* v. *United States*, 266 U. S. 1, where there was unremitting questioning for many days of a prisoner who was often not permitted to sleep and who was suffering from a serious illness. Thus there was in that case physical, as well as psychological, pressure.

issue of fact would have been regarded as controlling, just as it is with regard to controverted evidence of brutality. Indeed, in Haley's case physical brutality was alleged and denied, and so the court put that controverted evidence to one side and considered only whether the undisputed facts as to psychological pressure made the confession invalid as a matter of law.

But here the evidence shows without contrariety that Upshaw was arrested at 2:00 a. m. on Friday, June 6, and confessed about 9:00 a. m. on Saturday, June 7, without having been taken before a committing authority. Detaining him for slightly more than twenty-four hours may have been unnecessary delay under Rule 5 (a) of the Federal Rules of Criminal Procedure. But that illegal detention, if such it was, was not aggravated by continuous questioning for many hours by numerous officers, as was true in the *McNabb* and *Haley* cases and in the *Akowskey* case.[4]

166 On the contrary, the questioning of Upshaw was, as the United attorney put it, neither extensive nor coercive. He was questioned several times during his day of detention, but never by more than one officer and never more than thirty minutes at a time; all of which is uncontroverted. We are unwilling to say that, as a matter of law, such questioning during short detention brings Upshaw within the pattern of the *McNabb* case.

Had this appellant claimed and argued that the questioning was so intensive as to force his confession from him, perhaps the jury should have been told to say whether so or not; but he made no such claim at the trial and does not assert it before us.

Upshaw contents himself with saying he was illegally detained from 2:00 a. m. on Friday until his arraignment on the following Monday; and with arguing that his confession, given during that period of detention, was therefore inadmissible. As we have pointed out, he does not rely on the brief questioning as an aggravated circumstance. Upshaw's argument overlooks two important factors: first, that he confessed shortly after 9:00 a. m. on Saturday, so the subsequent portion of his detention, even if illegal, did not affect the admissibility of his confession, as it did not in the *Mitchell* case; and, second, that illegal detention, standing alone and without more, does not invalidate a confession, unless the detention produced the disclosure. That was expressly held by Chief Justice Groner in the opinion prepared by him for this court in *Boone* v. *United States*, 82 U. S. App. D. C. —, 164 F. (2d) 102, in which the *Mitchell* case was relied upon as justifying the ruling.

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[4] *Akowskey* v. *United States*, 81 U. S. App. D. C. 353, 158 F. (2d) 649.

It is strongly urged that the police are culpable for not taking Upshaw before a committing magistrate on Friday; but, however blameworthy they may have been on that score, we discern no reason for disturbing the appellant's conviction because of it. We do not condone official misconduct; on the contrary, we share the indignation expressed at unnecessary delay in arraigning prisoners. Police executives should discipline officers who are guilty of that practice.

But the argument that Upshaw's confession was on that account inadmissible disregards the decisive fact that here, as in *United States* v. *Mitchell*, there was no disclosure induced by illegal detention. Upshaw does not contend that his confession was so induced. If it be granted that detaining him all day Friday was illegal, nevertheless the disclosure he made, not being the fruit of the illegal detention, was relevant and admissible. Being relevant, it could be excluded, as the Supreme Court said of Mitchell's confession, "only as a punitive measure against unrelated wrongdoing by the police." We cannot exclude an admissible confession, and so discharge a confessed criminal,

"as an indirect mode of disciplining misconduct."

167 To do so would be to punish society, not the police. This we understand to be the position taken by the Supreme Court in the *Mitchell* case.

The actual holding of the *McNabb* decision, as we understand it, does not apply to a factual situation such as that before us. In the *Mitchell* opinion it is pointed out that "inexcusable detention for the purpose of illegally extracting evidence" from an accused, and the successful accomplishment of that purpose by continuous questioning for many hours under psychological pressure,[5] were the decisive features in the *McNabb* case which led the court to rule that a conviction on such evidence could not stand. In the present case no aggravating circumstance appears and, as we have shown, the detention is not alleged to have brought about the confession. The Supreme Court has never held, as far as we are able to ascertain, that illegal detention of a prisoner, without additional and aggravating circumstances, invalidates a confession which was not induced by it. In fact, the *Mitchell* opinion indicates to the contrary and we expressly so held in the *Boone* case.

[5] It should be noted that the words "inexcusable detention for the purpose of illegally extracting evidence" do not stand alone in the *Mitchell* opinion; on the contrary, such inexcusable detention is coupled by the Court with the aggravating circumstances of "continuous questioning for many hours under psychological pressure." To suggest that only "inexcusable detention for the purpose of illegally extracting evidence" caused the *McNabb* ruling is to distort the language of the Mitchell opinion.

In our view the confession of error by the United States Attorney was based on an erroneous conception of the legal principle involved. He says he believes Upshaw's confession "was entirely voluntary and was true." Yet he says the delay in arraignment was unreasonable and the confession was thereby invalidated. He cites the *McNabb* and *Mitchell* cases, neither of which supports his position, and the *Boone* case which is squarely opposed to it.

If we should now hold that illegal detention of a prisoner invalidates his confession, although wholly unrelated to it, we would thereby overrule our holding in *Boone* v. *United States* and, merely in order to rebuke the police for illegal conduct unconnected with the confession, we would release an habitual criminal, confessedly guilty, who began his activity in crime many years ago in his native Alabama and who has added to it more than once since he arrived in the District of Columbia. This we are unwilling to do.

Affirmed.

Dissenting Opinion

EDGERTON, *J.*, *dissenting:* I think the United States Attorney and his Assistants were eminently fair and right in confessing error.

Appellant was questioned by policemen for about thirty minutes soon after his arrest at 2 a. m. on Friday, June 6, 1947. He was questioned again at 9 or 10 a. m., at 168 11 a. m., at 5:30 p. m., and between 7:30 and 8 p. m.; in all, five times on Friday. Each time he denied guilt. On Saturday, June 7, about 9 a. m., he was questioned a sixth time and admitted guilt. Half an hour later he signed a confession which he repeated and acknowledged during the day. When he first confessed, he had been under arrest for more than 30 consecutive hours. That period included the whole of one regular working day (Friday). He was not taken before a committing magistrate until Monday, June 9. At the trial a police detective frankly explained why that was not done on Friday morning: "We didn't have anything to take him to the Police Court with. * * * I didn't feel that we had a sufficient case against him to have the Police Court hold him, and if the Police Court did hold him we would lose custody of him and I no longer would be able to question him."

The law requires an arresting officer to "take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses

against the laws of the United States."[6] Arrested persons without money or influence are not excepted. An arrested person with a criminal record is not excepted. "It is furthermore both by law and practice true that application for hearing might have been made to * * * committing magistrates at any hour. It follows that the detention was inexcusable and illegal at the outset."[7]

During the trial, the prosecutor described appellant's detention and questioning as "usual police procedure." The detective's explanation, and a number of cases that have reached this court, suggest that this procedure is not unusual in the District of Columbia. It is procedure in defiance of Congress and the courts. Unnecessary delay in producing a prisoner before a committing magistrate is false imprisonment. As this court says in its opinion, police executives should discipline officers who are guilty of this practice. It deprives the citizen of his liberty without due process of law. It is a violation of civil rights[8] that cannot be tolerated in a democratic society.

Until appellant's confessions were obtained, there was "inexcusable detention for the purpose of illegally extracting evidence."[9] It extracted the evidence. An event is presumably a result, not a coincidence, when it follows an act intended and likely to produce it. The presumption may be rebuttable in some cases, but in this case there is nothing to rebut it. Nothing suggests that the confession
169 would have been obtained if the illegal detention had not occurred. The *Boone* case,[10] in which this court found no causal connection between illegal detention plus questioning and a confession that followed, is distinguishable from the present case on three grounds. (1) The illegal detention of Boone was not expressly shown to have been for the *purpose* of questioning him and extracting a confession from him. (2) The questioning of Boone was less exhausting than that of appellant. Boone was questioned twice, appellant six times. (3) Boone did not confess until long after the police stopped questioning him. Appellant confessed while he was being questioned.

I think the *Boone* case is not only distinguishable but wrong. "Causal connection between some kinds of pressure

[6] Rule 5, Federal Rules of Criminal Procedure. These Rules were prescribed by the Supreme Court pursuant to an Act of Congress of June 29, 1940, c. 445, 54 Stat. 688.

[7] *Akoszkey* v. *United States*, 81 U. S. App. D. C. 353, 354, 158 F. 2d 649, 650.

[8] *To Secure These Rights*, Report of the President's Committee on Civil Rights (1947), p. 25.

[9] *United States* v. *Mitchell*, 322 U. S. 65, 67.

[10] *Boone* v. *United States*, 82 U. S. App. D. C. —, 164 F. 2d 102.

and subsequent confessions is obviously probable and should be assumed."[11] Illegal detention plus questioning, and particularly illegal detention plus extensive questioning, is an example of such pressure. When, as in this case detention leads to extensive questioning that leads to a confession, it seems to me obvious that the detention leads to the confession. The *Mitchell* case,[12] from which this court inferred that the Boone confession was admissible, held only that subsequent illegal detention does not rule out a confession previously and legally obtained. I find nothing in the *Mitchell* case to suggest what this court held in the *Boone* case, *viz.* that a prisoner who has been illegally held and extensively questioned before he confesses, and is still illegally held when he confesses, must offer additional proof that the detention and questioning caused the confession. In the present case there is the very substantial additional proof mentioned in the preceding paragraph. But I think the court errs in holding that any additional proof is necessary. The *Mitchell* case does not support that view and I think the *McNabb* case refutes it.

It is unimportant, if true, that a confession may be "voluntary" although extracted by illegal detention and questioning. Voluntary or not, a confession so extracted is not acceptable evidence in a federal court. That is what the Supreme Court held in the *McNabb* case. If a confession is found to be involuntary it is necessarily excluded on constitutional grounds. But the Supreme Court did not exclude the *McNabb* confessions as involuntary, or on constitutional grounds, but on other grounds that are present here. The Court said: "Judicial supervision of the administration of criminal justice in the federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence. Such standards are not satisfied merely by observance of those minimal historic safeguards * * * which are summarized as 'due process of law' and below which we reach what is really trial by force. * * * Quite apart from the Constitution, therefore, we are constrained to hold that the evidence elicited from the petitioners in the circumstances disclosed here must be excluded. For in their treatment of the petitioners the arresting officers assumed functions which Congress has explicitly denied them. * * * Legislation such as this, requiring that the police must with reasonable promptness show legal cause for detaining arrested persons, constitutes an important safeguard—not only in assuring protection for

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[11] *Hawkins v. United States*, 81 U. S. App. D. C. 376, 378, 158 F. 2d 652, 654.
[12] *United States v. Mitchell*, *supra*, note 9.

the innocent but also in securing conviction of the guilty by methods that commend themselves to a progressive and self-confident society. For this procedural requirement checks resort to those reprehensible practices known as the 'third degree' which, though universally rejected as indefensible, still find their way into use. It aims to avoid all the evil implications of secret interrogation of persons accused of crime."[13] Accordingly the Court said in the *Mitchell* case: "The *McNabb* decision was an exercise of our duty to formulate policy appropriate for criminal trials in the federal courts." The Court added: "We adhere to that decision and to the views on which it was based."[14]

The recent *Haley* case,[15] on the other hand, came to the Supreme Court from a State court, and the Supreme Court was therefore concerned only with the constitutional question whether Haley's confession was voluntary. We are concerned here, as the Supreme Court was in the *McNabb* case, with "the duty of establishing and maintaining civilized standards of procedure and evidence" in a federal court. Appellant's conviction should therefore be reversed. "Plainly, a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand without making the courts themselves accomplices in willful disobedience of law."[16]

171 In United States Court of Appeals
for the District of Columbia

No. 9621. April Term, 1948.

(File Endorsement Omitted)

Andrew Upshaw, Appellant,
vs.
United States of America, Appellee.

Appeal from the District Court of the United States for the District of Columbia.

Before: Edgerton, Clark and Wilbur K. Miller, *J.J.*

Judgment

Filed April 19, 1948

This cause came on to be heard on the transcript of the record from the District Court of the United States for the

[13] *McNabb* v. *United States*, 318 U. S. 332, 340, 341 342, 343 344.
[14] *United States* v. *Mitchell*, *supra*, note 9, at 68.
[15] *Haley* v. *Ohio*, 332 U. S. 596.
[16] *McNabb* v. *United States*, *supra*, note 9, at 345.

District of Columbia, and on appellee's confession of error and motion to remand, and was submitted by counsel for appellant on his brief.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

Per Mr. Justice Wilbur K. Miller.

Dated April 19, 1948.

Dissenting opinion by Mr. Justice Edgerton.

172 In United States Court of Appeals
for the District of Columbia.

(Title Omitted)

(File Endorsement Omitted)

Designation of Record

Filed May 6, 1948

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Confession of Error and Motion to Remand.
2. Opinion.
3. Judgment.
4. This designation.
5. Clerk's certificate.

Joel D. Blackwell,
Attorney for Appellant.

I hereby certify that a copy of the above Designation of Record was served on the U. S. District Attorney for the District of Columbia this 6th day of May, 1948.

Joel D. Blackwell.

173 Clerk's Certificate to foregoing transcript omitted in printing.

174 Supreme Court of the United States
No. 524, Misc., October Term, 1947.

(TITLE OMITTED)

On petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

Order Granting Motion for Leave to Proceed in Forma Pauperis; Granting Certiorari etc.

June 14, 1948

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 870 and placed on the summary docket.

★ U. S. GOVERNMENT PRINTING OFFICE: 799038 — NO. 1 — 1949

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1947

NO. [redacted]

ANDREW UPSHAW,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

Andrew Upshaw, through his attorney, Joel D. Blackwell, prays that a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the District of Columbia, entered April 19, 1948, affirming petitioner's conviction of Grand Larceny in the District Court of the United States for the District of Columbia.

OPINION BELOW

The opinion of the Court of Appeals has not yet been reported.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether the rule of McNabb v. United States, 318 U. S. 332, requires a holding that confessions made during illegal detention prior to arraignment are admissible in evidence, even though defendant was held twenty-nine (29) hours before the first alleged confession, thirty-three and a half (33½) hours before the second alleged confession and forty-one (41) hours before the third alleged confession.

2. Whether the rule of McNabb v. United States requires a holding that confessions made during illegal detention prior to arraignment are admissible in evidence, even though the arresting officer admits that the reason petitioner was not taken to Court for arraignment at the proper time, was because he (officer) did not feel that he had sufficient evidence to have petitioner held.

STATEMENT

The petitioner, hereinafter called the defendant, was charged that on May 1, 1947, he took and carried away a watch of the value of one hundred and thirty five ($135.00) dollars, belonging to one Harriet Pearce, which was never recovered. Mrs. Pearce testified that the defendant, with another man, was sent to her home on May 1, 1947, by a window cleaning company to do some house cleaning; that she took her watch off of the dresser and put it into the dresser drawer; that four other men of the same company worked for her on May 2nd and May 3rd and that all had access to the room from which the watch was allegedly stolen. She first missed her watch about 7:00 P.M. on May 3rd, 1947. Mrs. Pearce did not make a report to police of the alleged theft until about two weeks later.

Mrs. Pearce started to testify relative to an alleged confession at her home by the defendant about 9 P.M., on June 7th, 1947. Upon objection by the defense counsel, the jury was excluded by the Court. Mrs. Pearce testified in the absence of the jury relative to the alleged confession of the defendant as to taking her watch.

The defense counsel objected to such evidence on the ground that the defendant had been detained an unreasonable time after arrest before the alleged confession was made.

TESTIMONY OF FURR AND CULPEPPER

Detectives Furr and Culpepper also testified in the absence of the jury relative to the alleged confession of the defendant. The detectives testified they arrested the defendant about 2:00 P.M., on June 6th, 1947, at his home, 1533 Eighth Street, Northwest. He was taken to the Tenth Precinct and booked for investigation. Both officers testified that the defendant denied stealing the watch when questioned at the Tenth Precinct, after his arrest (R. 19).

Detective Culpepper testified that he next questioned the defendant on the same morning about 11:00 o'clock (R. 20). He questioned the defendant about 5:00 P.M., on the same day. On each occasion the defendant denied the theft.

Detective Culpepper again questioned the defendant about 2:00 P.M., June 7th, 1947, and the defendant is alleged to have signed a voluntary confession.

When questioned under cross-examination as to why the defendant had not been taken before a committing magistrate, neither on Friday, June 6th, nor on Saturday, June 7th, Culpepper stated:

> ".. because I didn't feel that we had a sufficient case against him to have the police court hold him, and if the police court did not hold him, we would lose custody of him, and I no longer would be able to question him." (R. 27)

Furr testified that the next time he questioned the defendant after his arrest on June 6th, 1947, was about 9:30 A.M., the same day, and again about 7:30 or 8:00 P.M., and the defendant continued to deny the theft (R. 31).

Furr testified that the defendant signed a voluntary confession on June 7th, about 9:30 A.M. (R. 31). Culpepper admitted taking the defendant to the home of the complaining witness about 9:00 A.M., on June 7th. During the trip, a heavy storm overtook them and they had to park their car until it abated.

Culpepper, in response to the defense counsel's questioning: "Isn't it a fact that you told the defendant you were going to take him out and tie him to the car and drag him to his death," asked the Court if he had to answer that. When the Court ruled he did, the answer was "No." (R. 28)

As to whether or not the confession was voluntary, the Court ruled that was a factual issue.

The defense counsel informed the Court that he took the position that the confession was not admissible, inasmuch as the defendant's legal rights were involved, in that the police officers held him an unreasonable time in order to get the alleged confession; that he was arrested at 2:00 A.M., Friday, June 6th, without a warrant. They didn't bring him into court on that date, they wanted to question him, and although he denied the theft they continued to question him. Defense counsel also informed the Court that they had an opportunity to bring the defendant before a police magistrate or the U. S. Commissioner, on June 7th, 1947, but they did not.

They waited and took him to the home of the complaining witness on Saturday night, June 7th, about 9:00 o'clock, at which time he is alleged to have made a confession.

Culpepper also testified that the defendant had not been beaten to get the confession, but taken to the home of the complaining witness (R. 83).

It is pointed out by the defense counsel that in the McNabb, Mitchell, and Akowskey cases that the confession was not admissible. The Court ruled that the confession was admissible.

Thereafter, Mrs. Pearce returned to the stand and in the presence of the jury related that the defendant came to her house about 9:00 P.M., on June 7th, and admitted stealing her watch. The prosecution then read the alleged confession to the jury (R.83).

Culpepper testified before the jury that he took the defendant to the home of the complainant, Mrs. Pearce, about 9:00 P.M., June 7th, and his confession to Mrs. Pearce in the presence of Captain Pearce (Metropolitan Police) that he stole her watch. Furr testified to the jury that the defendant signed a written confession about 9:00 A.M., June 7th, admitting the theft of the watch.

DEFENDANT'S TESTIMONY

The defendant testified that they had threatened to kill him on June 6th, about 11:00 A.M., unless he confessed to stealing the watch in question; that Furr started banging him on the head and in the stomach shortly after he was taken to the precinct(R.82).

The defendant testified that he told Furr about 3:30 P.M., that he took the watch in order to get them to stop beating him. The defendant testified that he did not know whether he signed the alleged confession offered in evidence or not, but he did sign a paper without reading it (R. 84).

The defendant testified that Culpepper did not tell him where he was taking him when they left on Saturday night for the home of Mrs. Pearce, but said he was going some place, the descriptive language the defendant did not wish to use (R. 87). While they were en route to the home of Mrs. Pearce a storm came up and they had to park the car.

The defendant testified that at that time Culpepper said to him:

> "You're going to know something about this watch between now and morning. I want you to tell Captain Pearce's wife the same thing you have said on the statement or else." (R. 88)

The defendant testified that he confessed to Mrs. Pearce of taking the watch, but not of his own free will (R. 89). The defendant testified that he made a report to the jail physician at his earliest convenience, which was July 11th, 1947, that he had been beaten by police officers (R. 91). The physician's report showed that the defendant did make a report of having been beaten by police officers (R. 115).

Mrs. Pearce, called by the defense counsel, testified that five men had worked in her house and that Culpepper told her that the defendant was the only one who had a record. Culpepper and Furr, called in rebuttal, testified that nothing unusual had happened between the time they arrested the defendant and when he allegedly confessed to the crime. Defense counsel inquired of the officers if they had mistreated or beaten the defendant, and if they had, would they admit it in court. Their answer was they would admit it if true but that they did not beat him.

The defense moved for a judgment of acquittal when the Government rested its case and again when it completed the rebuttal. The defense counsel also argued a motion for a new trial which was denied.

Attorney for defendant noted and perfected an appeal to the United States Court of Appeals for the District of Columbia. After defendant's (appellant's) brief was filed, a confession of error and motion to remand was filed by the United States District Attorney for the District of Columbia. The Appellate Court confirmed the judgment of the District Court in a 2 to 1 decision.

SPECIFICATION OF ERROR TO BE URGED

The Court of Appeals Erred:

1. In holding that the facts of the instant case do not fall within the rule of McNabb v. United States, 318 U. S. 332.

2. In its failure to rule on the validity of the admissibility in evidence of an alleged third confession made at the home of the complaining witness forty-one (41) hours after petitioner's arrest and prior to his arraignment, although police officer had two full days prior to said confession to have arraigned petitioner.

3. In holding that petitioner contented himself with saying he was illegally detained from 2:00 A. M. on Friday until arraignment on the following Monday and did not rely on the questioning as an aggravating circumstance.

4. In its failure to grant the United States District Attorney's Confession of error and Motion to remand.

5. In confirming the Judgment of the trial Court.

REASONS FOR GRANTING WRIT

The Judgment of the Court of Appeals is clearly contrary to the McNabb case. One of the Appeals Court Justices gave a strong dissenting opinion holding that the Judgment of the trial Court should be reversed because of the rule in McNabb v. United States. The United States District Attorney filed a confession of error and motion to remand the case to the District Court with directions to vacate the Judgment and enter a verdict of acquittal. The District Attorney in support of his position relied on McNabb v. United States.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for writ of certiorari should be granted.

Joel D. Blackwell
512 Fifth Street, N. W.
Washington, D. C.

Counsel for Petitioner

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 98 98

ANDREW UPSHAW,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONER

JOEL D. BLACKWELL,
JAMES T. WRIGHT,
Counsel for Petitioner.

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OCTOBER TERM, 1948

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vs.

THE UNITED STATES OF AMERICA

Respondent.

BRIEF FOR PETITIONER

Opinion Below

The opinion in the United States Court of Appeals was announced on April 19, 1948 affirming the petitioner's conviction of grand larceny in the United States District Court for the District of Columbia has not yet been reported.

Jurisdiction

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1935. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this court on May 7, 1934.

Questions Presented

1. Whether under doctrine the rule of *McNabb* v. *United States*, 318 U. S. 332, a confession is admissible in evidence where it is obtained during an extended illegal detention prior to arraignment.

2. Whether under the doctrine of *McNabb* v. *United States* a confession obtained during an illegal detention prior to arraignment is admissible in evidence especially when the arresting officer admits that the petitioner was illegally detained and not seasonably taken for arraignment because the officer did not feel that there was sufficient evidence to make out a case against the petitioner.

Statement of the Case

The petitioner, hereinafter called the defendant, was charged that on May 1, 1947, he took and carried away a watch of the value of one hundred and thirty-five dollars ($135.00), belonging to one Harriet Pearce, which was never recovered. Mrs. Pearce testified that the defendant, with another man, was sent to her home on May 1, 1947, by a window cleaning company to do some house cleaning; that she took her watch off of the dresser and put it into the dresser drawer; that four other men of the same company worked for her on May 2nd and May 3rd and that all had access to the room from which the watch was allegedly stolen. She first missed her watch about 7:00 P. M. on May 3rd, 1947. Mrs. Pearce did not make a report to police of the alleged theft until about two weeks later.

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Culpepper also testified that the defendant had not been beaten to get the confession, but taken to the home of the complaining witness (R. 33).

It was pointed out by the defense counsel that in the *McNabb*, *Mitchell* and *Akowskey* cases that the confession was not admissible. The Court ruled that the confession was admissible.

Thereafter, Mrs. Pearce returned to the stand and in the presence of the jury related that the defendant came to her house about 9:00 P. M., on June 7th, and admitted stealing her watch. The prosecution then read the alleged confession to the jury (R. 53).

Culpepper testified before the jury that he took the defendant to the home of the complainant, Mrs. Pearce, about 9:00 P. M., June 7th, and his confession to Mrs. Pearce in the presence of Captain Pearce (Metropolitan Police) that he stole her watch. Furr testified to the jury that the defendant signed a written confession about 9:00 A. M., June 7th, admitting the theft of the watch.

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The defendant testified that they had threatened to kill him on June 6th, about 11:00 A. M., unless he confessed to stealing the watch in question; that Furr started banging him on the head and in the stomach shortly after he was taken to the precinct (R. 82).

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bia. The Appellate Court confirmed the judgment of the District Court in a 2 to 1 decision.

Specifications of Errors to Be Urged

1. That the Honorable Court below erred in holding a confession admissible in evidence where the confession was obtained during an extended illegal detention prior to arraignment.

2. That the Honorable Court below erred in holding a confession admissible in evidence where the confession was obtained during an illegal detention and upon the admission of the arresting officer that the delay in arraigning the petitioner was because the officer did not feel he had sufficient evidence to make a case against the petitioner.

3. This Honorable Court should expressly over-rule its holding in *Mitchell* v. *U. S.*, 322 U. S. 65, declaring that illegal detention alone does not vitiate a confession.

Argument

Points I and II

The Honorable Trial Court below erred in holding a confession admissible in evidence where the confession was obtained during an extended illegal detention especially when the arresting officer admits that the delay in arraigning the petitioner was because the officer did not feel he had sufficient evidence to make a case against the petitioner.

The law clearly requires, as provided in Rule 5(a), Rules of Criminal Procedure for the District Courts of the United States, "An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person *without unnecessary delay* before the nearest available commissioner or before any other nearby officer empowered to commit per-

sons charged with offenses against the law of the United States". In this case it is undisputed that the petitioner was detained for some thirty hours (30) before the alleged confession. In addition, the police officer honestly admitted that the petitioner was not seasonably arraigned, "Because, I didn't feel that we had a sufficient case against him to have a Police Court hold him, and if the Police Court did not hold him we would lose the custody of him and I no longer would be able to question him." There could be no more a flagrant violation or abuse of a person's civil rights in a free and democratic society than this and such a procedure is clearly contrary to both the letter and spirit of the law. In this connection this Court in *Chambers* v. *Florida*, 309 U. S. 227, said in part, "under our constitutional system courts stand any winds that blow as haveus or refuge for those who might otherwise suffer because they are helpless, weak, outnumbered or because they are non-conforming victims of prejudice and public excitement . . . . No higher duty, no more solemn responsibility, rests upon this Court than that of the translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our constitution of whatever race, creed, or persuasion". . . .

It is potently clear that the detention of the petitioner was plainly unnecessary, unreasonable and illegal from its inception and that it deprived the petitioner of his liberty without due process of law. It further appears that the alleged confession came only as a result of the illegal detention and because of it. The illegal detention together with excessive interrogation is sufficiently aggravating circumstance within itself to violate the established concepts of democratic procedure so as to exclude from evidence a confession so obtained. In *McNabb* v. *U. S.*, this Court said in part, "Judicial supervision of the administration of criminal justice in the federal courts implies a duty of

establishing and maintaining civilized standards of procedure and evidence. Such standards are not satisfied merely by observance of those minimal historic safeguards . . . Which are summarized as 'due process of law' and below which we reach what is really trial by force. . . . Quite apart from the constitution, therefore, we are constrained to hold that the evidence elicited from the petitioners in the circumstances disclosed here must be excluded. For in their treatment of the petitioners the arresting officers assumed functions which Congress has explicitly denied them. . . . Legislation such as this, requiring that the police must with reasonable promptness show legal cause for detaining arrested persons constitutes an important safeguard—not only in assuring protection for the innocent but also in securing conviction of the guilty by methods that command themselves to a progressive and self-confident society. For this procedural requirement checks resort to those reprehensible practices known as the 'third degree' which though universally rejected as indefensible, still find their way into use. It aims to avoid all the evil implications of secret interrogation of persons accused of crime."

It is submitted that the doctrine thusly established expressly condemns the admissibility of any confession obtained during an illegal detention after extended interrogation especially where the accused is admittedly held for questioning to secure evidence sufficient to make out a case. Certainly the delay was not simply a delay but an unreasonable, unnecessary, illegal delay contrary to the letter and spirit of the established law.

It appears abundantly clear that the disclosure or confession made in this case came as a direct result of the illegal detention in fact during the interrogation of the petitioner and as heretofore admitted the detention was solely for the purpose of extracting evidence from the accused. It follows that the evidence so extracted during such illegal

detention is void and of no effect and that detention plus the interrogation is the very kind of circumstance within the legal contemplation by this Court in the McNabb rule and the instant case is distinguishable from the situation in *Mitchell* v. *United States*, 322 U. S. 65.

It is submitted that the Honorable Court below erred in its holding here even if the now so-called "aggravating circumstances" be found for it is the view by the petitioner that this Honorable Court clearly intended to establish a policy condemning the use of any confession obtained during a period of illegal detention. More especially is this true when the illegal detention is solely for the purpose of interrogation for the purpose of extracting evidence from the accused, and the confession came as a result of the illegal detention and interrogation. Accordingly the doctrine of the *McNabb* and *Mitchell* cases becomes meaningless if the court unwittingly aids the violation of civilized standards of procedure and evidence. The declared purpose of the McNabb doctrine was "the duty of establishing and maintaining civilized standards of procedure and evidence." . . . And as this Court said in the *McNabb* case, "Plainly a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand without making the courts themselves accomplices in the wilful disobedience of the law."

Point III

The case of *United States* v. *Mitchell* 322 U. S. 65, 67 was erroneously decided and should be over-ruled.

In that case the court was concerned with the question as to whether illegal detention alone invalidated a confession when the detention did not produce the alleged disclosure. As the instant case has already been distinguished on its facts, this discussion is directly to the correctness of the

ruling of the question so raised. It would appear that the court fell into error in failing to see the causal connection between the illegal detention and the confession. For it seems to axiomatically for that the psychological pressure imposed upon the accused by illegal detention and interrogation, the apparent purpose of the illegal detention, would inevitably lead to the confession. And this is especially clear in the instant case.

Rules of law ought not be changed lightly, but sound rules of judicial administration require that when the reason for the rule is erroneous, or is manifestly unsound, or more harm will result than good from following the rule, it is more important for the court to be correct than consistent. Especially is this true, where as here, fundamental rights of American citizens are involved. (Black, Law of Judicial Precedents, Chapter 3, Section 66-68, Page 203).

In *Smith* v. *Allwright*, 321 U. S. 649 where the court expressly overruled *Grovey* v. *Townsend* 295 U. S. 45, the court said, ". . . in reaching the decision we have not been unmindful of the desirability of continuity of decisions on a constitutional question. However, when convinced of former error this court has never felt constrained to follow precedent".

In the following cases the court brought changes in the law by the over-ruling of precedent: *United States* v. *Darby*, 312 U. S. 100 (1940) over-ruling *Hammer* v. *Dagenhart* 247 U.S. 251 (1917). *California* v. *Thompson*, 313 U. S. 109 (1940) over-ruling *DiSanto* v. *Pennsylvania*, 273 U. S. 34 (1926).

West Coast Hotel v. *Parrish*, 300 U. S. 370 (1936) over-ruling *Adkins* v. *Children's Hospital*, 261 U. S. 525 (1922) *Helvering* v. *Mountain Produce Corp.* 303 U. S. 376 (1937) over-ruling *Gillespie* v. *Oklahoma* 257 U. S. 501(1921).

Psychological pressure, if not physical pressure, should be presumed from an illegal detention and the circumstances

surrounding it, as there would appear no other purpose than the extraction of the disclosure which follows: It is wholly unrealistic to establish a civilized standard of procedure and evidence and then permit it to become distorted by an ingenious or ingenuous evasion of it by legalistic chicanery of those who are to be bound thereby the end result is a high sounding legal theory which is meaningless in practice.

This, it is submitted, was not the intention of the legislature in establishment of this protection for the individual nor the intention of the court in translating this policy in the reality.

Conclusion

We say, therefore, in view of what has been stated, that the questions presented here are of vital importance, and the judgment of the lower court should be reversed.

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(8888)

NO. 98

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

ANDREW UPSHAW, PETITIONER

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals
For the District of Columbia

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The majority and dissenting opinions in the Court of Appeals (91-98) are reported at 168 F. 2d 167.

JURISDICTION

The judgment of the Court of Appeals was entered April 19, 1948 (R. 98-99). The petition for a writ of certiorari was filed May 17, 1948, and was granted June 14, 1948 (R. 100). The

jurisdiction of this Court rests upon 28 U. S. C. 1254. See also Rules 37(b) (2) and 45(a), F. R. Crim. P.

QUESTION PRESENTED

Petitioner made a confession approximately 30 hours after he had been arrested and prior to the time he was arraigned before a committing magistrate. During that period he was questioned occasionally by a single officer for short periods. One of the arresting officers explained that the failure to arraign petitioner on the day of the arrest was due to their desire to question him further. The question is whether the confession is admissible under *McNabb* v. *United States*, 318 U. S. 332, and *United States* v. *Mitchell*, 322 U. S. 65.

RULE INVOLVED

Rule 5(a) of the Federal Rules of Criminal Procedure provides:

> APPEARANCE BEFORE THE COMMISSIONER. An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith.

STATEMENT

Petitioner was convicted in the United States District Court for the District of Columbia of the larceny of a watch and he was sentenced to imprisonment for a period of 16 months to four years (R. 79, 84, 85). The watch was the property of one Mrs. Pearce and was missed by her after some workmen, among whom was petitioner, had been sent to clean the windows and floors of her home (R. 3-6).

The sole point at issue is the admissibility under the *McNabb* rule of a confession by petitioner that he had taken the watch, which had been placed in a drawer of a vanity at Mrs. Pearce's home, and had sold it to some strangers for $5 and a bottle of whiskey (Gov. Ex. 1, R. 30, 82-83). The facts on that issue, developed, mainly, at a hearing outside the presence of the jury, may be summarized as follows:

Petitioner was arrested about 2 o'clock in the morning on Friday, June 6, 1947, by Detectives Culpepper and Furr (R. 11, 18).[1] He was taken to No. 10 Precinct and questioned for not more than

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[1] After Mrs. Pearce reported the loss of the watch, police questioned the men, other than petitioner, who had been working at her home (R. 40). Petitioner was at the time confined at the Lorton Prison serving a short sentence (R. 43, 48). Culpepper left his card at petitioner's home with the request that petitioner get in touch with him when he was released, but petitioner did not do so, although he testified that he had telephoned the station house (R. 43, 48, 51-52).

half an hour (R. 12, 18).[2] About 9 o'clock that morning, he was questioned by Furr, apparently for a short time (R. 18). At 11 a. m. he was questioned briefly by Culpepper through the bars of his cell, and Culpepper again questioned him briefly through the bars at 5:30 p. m. (R. 12, 14). Between 7:30 and 8:00 p. m. he was questioned by Furr (R. 18). On all these occasions petitioner denied that he was guilty (R. 12-13, 18).

Culpepper was asked why he did not have petitioner taken before the Police Court on June 6, and he replied (R. 16):

> Because I didn't feel that we had a sufficient case against him to have the Police Court hold him, and if the Police Court did hold him we would lose the custody of him and I no longer would be able to question him.

About 9 o'clock in the morning on Saturday, June 7, petitioner was questioned by Furr and admitted his guilt. He signed a written statement at 9:30. (R. 18, see also R. 29.)[3] At 2:00 p. m.,

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[2] At that time he was coughing considerably, which interfered to some extent with the questioning. He said he had bronchial trouble (R. 14-15) and had been drinking (R. 30-31) but he was not drunk (R. 31) and did not appear to be ill (R. 15, 31). These difficulties are not referred to in connection with later interrogations and petitioner appeared to be all right when he was questioned by Culpepper about 11 o'clock that morning (R. 15).

[3] Petitioner was apparently not arraigned at that time because the case was considered to be Culpepper's, who was not then on duty (R. 39).

when Culpepper came on duty, petitioner reaffirmed his confession to him (R. 13). Culpepper testified that at this time petitioner told him he had tried to get in touch with him the night before to tell him about the case (R. 39). That evening, Culpepper took petitioner to Mrs. Pearce's home, and petitioner repeated to her his admission of the theft (R. 7-8, 15).

Petitioner was arraigned on Monday, June 9 (see R. 21, 90).

The district court ruled that petitioner's confession was admissible under the rule of *McNabb v. United States*, 318 U. S. 332, as interpreted by Chief Judge Laws of the same court in a decision in another case which was subsequently affirmed by the Court of Appeals for the District of Columbia. *Boone v. United States*, 164 F. 2d 102 (R. 20-21).[4]

On appeal, the United States Attorney confessed error, stating that although he deemed petitioner's confession to be voluntary and true, and although the interrogation was not extended or

[4] The district court also ruled that the question of voluntariness was one for the jury (R. 18-19). At the trial, petitioner testified that he confessed because he had been beaten, that his signed statement was not true, and that he merely agreed to statements which the officers made to him (R. 44-51, 55-59). This was categorically denied by the officers (R. 32-41, 42, 69-70, 73). Mrs. Pearce testified that petitioner was calm when he talked to her and offered to repay her for the watch (R. 20-23, 26-27). A physician who examined petitioner on June 12 found no bruises at that time (R. 62-64). The issue of voluntariness was left to the jury under appropriate instructions (R. 78).

coercive, he thought the confession was inadmissible under the *McNabb* rule, because petitioner's arraignment had been delayed for an unreasonable length of time for the purpose of interrogation (R. 88-91). The Court of Appeals, one judge dissenting (R. 95-98), refused to accept the confession of error, holding that since there were no aggravating circumstances in addition to the illegal detention, the confession was not inadmissible under the *McNabb* rule as later interpreted in *United States* v. *Mitchell*, 322 U. S. 65 (R. 91-95). The conviction was accordingly affirmed (R. 98-99).

SUMMARY OF ARGUMENT

The circumstances under which petitioner's confession was made bring this case about midway between the situations before this Court in *McNabb* v. *United States*, 318 U. S. 332, and *United States* v. *Mitchell*, 322 U. S. 65. In the instant case, unlike that of *Mitchell*, the delay in arraignment for the crime involved was admittedly for the purpose of questioning, but, unlike the *McNabb* case, the period of delay was not utilized to bring psychological pressure against the accused in the form of prolonged and continuous questioning. Whether a confession made in such circumstances should or should not be admitted in evidence depends upon one's conception of the basic evil at which the sanction of the *McNabb* rule is directed.

The *Mitchell* decision makes it clear that delay in arraignment, *per se*, is not enough to warrant

exclusion of a confession. Hence, the mere fact that petitioner confessed thirty hours after he was arrested does not render his confession inadmissible in evidence.

The lower courts have regarded the *McNabb* decision, as explained in the *Mitchell* case, as being directed against the use of a period of illegal detention for the application of psychological pressure—akin to third degree methods although not amounting to actual coercion—by prolonged and continuous questioning. If, as we believe, that is the correct interpretation of the *McNabb* rule, the confession here is clearly admissible. Petitioner was questioned only intermittently for short periods during the time he was held, and the questioning was not coercive in any degree. None of the oppressive circumstances present in the *McNabb* case, which were emphasized by this Court in the *Mitchell* case as the basis for the *McNabb* decision, were present in this case. There were no groups of officers, no protracted questioning, no real pressure. If the use of methods akin to the third degree is the real evil at which this Court was striking in the *McNabb* case, there is no reason to exclude the confession in this case; there was nothing akin to such methods here.

The confession here can be deemed inadmissible only if the Court considers that delay in arraignment for the purpose of questioning in itself constitutes such wrongdoing on the part of police as to require the outlawing of a voluntary confession

on that ground alone. We do not believe that the Court intended to go so far. Almost all students of the problems of investigation and detention agree that some questioning of persons accused of crime is necessary and desirable under our system of law enforcement. While the crime here involved is a petty one, the principle adjudged in this case will be as applicable to murder as to petty larceny. Here a person, reasonably believed to be implicated in a crime, who had been asked to appear and not done so, was held for questioning, but he was questioned by a single officer for short periods under circumstances which were not oppressive in any way. We do not believe that such conduct can be deemed so far beyond the bounds of sturdy law enforcement as to require the exclusion of a confession which was manifestly voluntary, and thus to assure that a person clearly shown to be guilty should go free.

ARGUMENT

SINCE THE PERIOD OF DELAY IN ARRAIGNMENT WAS NOT UTILIZED TO BRING PSYCHOLOGICAL PRESSURE AGAINST PETITIONER BY PROLONGED AND CONTINUOUS QUESTIONING, PETITIONER'S VOLUNTARY CONFESSION WAS PROPERLY ADMITTED IN EVIDENCE

The problem presented by this case is far more important than the petty crime out of which it arises. The problem here is the extent to which the Court will, under its power to formulate rules

of evidence, undertake to regulate the questioning of suspected persons by law enforcement officers.

The problem is not new. The discrepancy between the policy of the statutes, federal and state, requiring prompt arraignment of arrested persons, and the actual practice in most jurisdictions whereby suspected persons were held and questioned, sometimes for long periods, was the subject of considerable study and comment for years prior to the decision of this Court in *McNabb v. United States*, 318 U. S. 332. See, for example, *Report of the National Commission on Law Observance and Enforcement*, Report on Lawlessness in Law Enforcement; Warner, *The Uniform Arrest Act*, 28 Va. L. Rev. 315, 317-324; Hall, *Law of Arrest in Relation to Social Problems*, 3 U. of Chic. L. Rev. 345, 356-357; Fraenkel, *From Suspicion to Accusation*, 51 Yale L. J. 748, 753-758. While the practice of delayed arraignment was almost universally condemned as imposing hardships on defendants and as opening up opportunities for use of the third degree, it was also generally agreed that some questioning of arrested persons was both necessary and desirable. For a verifiable explanation of the suspicious conduct might be the result, with the ensuing benefit to the suspect of immediate exoneration. Thus, the Commission on Law Observance stated, "Few of our informants wish to deprive the police of the power to question persons under arrest." *Op. cit.* at p. 174. The Commis-

sion itself recommended, as probably the best remedy, regulation of the questioning of arrested persons by providing for interrogation before a magistrate. *Op. cit.* p. 5. The formulators of the Uniform Arrest Act suggested that the problem be met by providing for detention not amounting to arrest for a period not exceeding two hours, for arraignment within 24 hours after arrest, and for the holding of a suspect for an additional period of 48 hours, if a judge so ordered for good cause shown. Warner, *The Uniform Arrest Act*, 28 Va. L. Rev. 315, 339-342, 344, 347. No federal legislation resulted from these investigations, possibly because it was generally agreed that the use of the third degree was not prevalent in federal law enforcement. See Report of the National Commission, *op. cit.* p. 4.

In 1943, however, this Court, in the exercise of its power to formulate rules of evidence for the federal courts, laid down the policy of excluding a confession obtained by prolonged and continuous questioning during a period of illegal detention. *McNabb* v. *United States*, 318 U. S. 332; *Anderson* v. *United States*, 318 U. S. 350.

Those decisions touched off anew discussion of the problem of where to draw the line between proper safeguards for the rights of individuals and the legitimate need, in the interests of the community's security, for law enforcement officers to question persons suspected of implication in crime.

One aspect of the discussion centered about proposed Rule 5 of the Federal Rules of Criminal Procedure, which were in the process of formulation when the *McNabb* and *Anderson* decisions were handed down. Proposed Rule 5(a) provided for arraignment after arrest "without unnecessary delay," and paragraph (b) provided:

> No statement made by a defendant in response to interrogation by an officer or agent of the government shall be admissible in evidence against him if the interrogation occurs while the defendant is held in custody in violation of this rule. [Federal Rules of Criminal Procedure, Preliminary Draft, pp. 11-16.][5]

The proposal embodied in paragraph (b) evoked considerable protest from members of the bench and bar, and from law enforcement officers. See Waite, *Police Regulation by Rules of Evidence*, 42 Mich. L. Rev. 679, 689-693; Dession, *New Rules of Criminal Procedure*, 55 Yale L. J. 694, 706-714. Law enforcement officers generally protested against any use of the exclusionary device. See Waite, *op. cit.* But even those who approved the

[5] The Advisory Committee had rejected a proposal by Professor Waite for interrogation of suspected persons at the time of preliminary hearing on the ground that such procedure might violate the privilege against self-incrimination and on the further grounds that commissioners often were neither properly trained nor have the facilities or time to conduct such investigations. See Federal Rules of Criminal Procedure, Preliminary Draft, pp. 248-250, 253-254.

exclusion of confessions as an effective sanction against unnecessary illegal detention felt that the proposed rule was too rigid, and that rules of evidence should more properly be evolved by judicial decision, on a case to case basis, in the light of experience in particular factual situations. For an expression of this point of view, see Berge, *The Proposed Federal Rules of Criminal Procedure*, 42 Mich. L. Rev. 353, 357-359. Rule 5(b), as proposed, was omitted from the Second Preliminary Draft of the Rules of Criminal Procedure and from the Rules as promulgated.

Similarly, while Congress has given consideration to the problem of investigation and detention, no solution has as yet been crystallized in legislation. In 1943, shortly after the *McNabb* decision, a bill was introduced in the House of Representatives by Congressman Hobbs, providing "That no failure to observe the requirement of law as to the time within which a person under arrest must be brought before a magistrate, commissioner, or court shall render inadmissible any evidence that is otherwise admissible." H. R. 3690, 78th Cong., 1st sess. Extensive hearings were conducted on that bill. Hearings before Subcommittee No. 2 of the Committee on the Judiciary, House of Representatives, 78th Cong., 1st sess. Law enforcement officers of the District of Columbia favored the proposed measure, arguing that the *McNabb* rule gave them insufficient time to conduct proper investigations, and pointing out

that in the District of Columbia, after arraignment and commitment, control over the prisoner passes from the local police to the United States Marshal, with resulting restrictions upon the investigatory process. Hearings, *supra*, pp. 1-10, 43-61. Attorney General Biddle pointed out that there were instances in which delay in arraignment was absolutely necessary in order not to forewarn confederates, citing the case of the saboteurs, the last of whom was arrested eight or nine days after the first. He favored, as one approach to the problem, more flexibility in the arraignment statutes, rather than the abolition of the sanction of the *McNabb* rule. Hearings, *supra*, pp. 35-41. Opponents of the bill took the view that the *McNabb* rule was the only effective means of assuring prompt preliminary hearings of arrested persons. Hearings, *supra*, pp. 61-63, 75-107. In a "Statement by the Committee on the Bill of Rights of the American Bar Association" on the Hobbs Bill, containing a careful and thorough review of the questions involved, the Committee disapproved the bill, but urged broad consideration of the whole problem of detention and investigation. The Committee recognized that there was real need for the questioning of suspected persons and urged that consideration be given to regulation of questioning. Statement, *supra*, pp. 28-34, 48-50. It also suggested that consideration be given to sanctions other than that of rigid judicial exclusion. Statement, *supra*, pp. 41-45.

The Judiciary Committee of the House recommended passage of the Hobbs Bill as a temporary expedient, pending a thorough study of the problem. H. Rep. No. 1509, 78th Cong., 2d sess. The bill passed the House but was not acted on in the Senate. 90 Cong. Rec. 9376. At the next session, the bill again passed the House with a proviso to the effect that unreasonable detention should be deemed *prima facie* evidence of the involuntariness of a confession. H. Rep. No. 245, 79th Cong., 1st sess.; 91 Cong. Rec. 2508. This proviso was stricken from the bill as reported by the Senate Committee (S. Rep. No. 1857, 79th Cong., 2d sess.), but the bill was passed over without having been brought to a vote. 92 Cong. Rec. 10380. The bill in its original form was again passed by the House the following year (93 Cong. Rec. 1392; H. Rep. No. 29, 80th Cong., 1st sess.) but was not acted on in the Senate.

Whether from inability to agree on the most desirable solution, or from a conviction that the problem can more properly be handled by the courts on a case to case basis, the fact is that, although Congress is thus aware that the problem of detention and investigation is one for which many students have recommended legislative remedies,[6] it has thus far taken no action. Thus it

[6] For other discussions of the problem of investigation and detention, see *Illegal Detention and Admissibility of Confessions*, 53 Yale L. J. 758; McCormick, *Some Problems and De-*

has been left to the courts to determine how far they will use their power to exclude evidence to regulate the questioning of arrested persons by law enforcement officers.

Two principles have already been established by the decisions of this Court. The *McNabb* and *Anderson* decisions make it clear that where a period of illegal detention is used to bring psychological pressure against an accused by prolonged and continuous questioning, a confession obtained under such oppressive circumstances, whether voluntary or not, will be excluded. On the other hand, where illegal detention has no causal relationship to a confession, as in the situation where the illegal detention merely follows a confession voluntarily made at the time of arrest, the confession is admissible. *United States* v. *Mitchell*, 322 U. S. 65.

The situation involved in the instant case lies about midway between these two criteria, a circumstance which undoubtedly accounts for the differences of opinion in the court below. In the in-

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velopments in the Admissibility of Confessions, 24 Tex. L. Rev. 239, 270-278; *Admissibility of Illegally Obtained Confessions in Federal Courts*, [1945] Wis. L. Rev. 105; *The McNabb Rule Transformed*, 47 Col. L. Rev. 1214; Dorskind, *The Effect of the Hobbs Bill on Self-Incrimination and Confessions*, 32 Cornell L. Q. 594. The problem of arrest and investigation has recently been the subject of study and recommendation by the Civil Rights Committee of the District of Columbia Bar Association. See 15 Journal of Bar Ass'n of the D. C. 104, 331. On September 14, 1948, the Association voted to recommit the cited reports to the committee.

stant case, unlike the *Mitchell* case, the delay in arraignment was admittedly for the purpose of questioning, but, unlike the *McNabb* case, the period of delay was not utilized to bring psychological pressure against petitioner in the form of prolonged and continuous questioning. Whether a confession made in such circumstances should or should not be admissible in evidence depends, therefore, upon one's conception of the basic evil at which the sanction of the *McNabb* rule is directed.

Before the *Mitchell* decision, some lower courts had assumed that delay in arraignment *per se* was the wrongdoing to which the sanction of the *McNabb* rule applied. See the opinion of the court below in the *Mitchell* case, 138 F. 2d 426; see also *United States* v. *Hoffman*, 137 F. 2d 416, 420-421 (C. C. A. 2). The *Mitchell* decision of this Court made it clear that that interpretation of the *McNabb* rule was incorrect; that mere delay in arraignment, when the delay has no causal relation to a confession, is not sufficient to justify the exclusion of a voluntary admission of guilt. The Court said in that case, 322 U. S. at 70-71:

> Our duty in shaping rules of evidence relates to the propriety of admitting evidence. This power is not to be used as an indirect mode of disciplining misconduct.

As Attorney General Biddle pointed out in his testimony on the Hobbs Bill, *supra*, p. 13, situa-

tions do arise in which delay in arraignment is absolutely essential to proper law enforcement. Where delay is not motivated by a desire to question the suspect and is not used for that purpose, then the fact that the suspect makes a confession during the period of delay ought not to require exclusion of the confession. Such a situation was before the Court of Appeals for the District of Columbia in *Wheeler* v. *United States*, 165 F. 2d 225, certiorari denied, 333 U. S. 829-830. There the police had information leading them to believe that one of the defendants, Patton, was implicated in a murder committed in the course of a robbery, but their information could not be definitely confirmed until he was identified by the persons whom he had held at the point of a gun. The identifying witnesses were out of town when Patton was arrested, and his arraignment was delayed pending such identification. In the meantime, he made incriminating statements. See Memorandum for the United States, Nos. 300, 327 Misc., Oct. T. 1947, pp. 7-8. The Court of Appeals held that the statements were admissible, and we believe correctly so, for, although the confession was made after the time when the defendant would normally have been arraigned, the delay in arraignment did not cause the confession. Without a causal connection between the delay in arraignment and the confession, a confession should not be excluded, even though it may have been made after the lapse of a reasonable time following the

arrest. Hence, the mere fact that petitioner confessed thirty hours after he was arrested is not a reason to exclude the confession in the instant case.

In the *Mitchell* case, this Court explained the *McNabb* decision as follows (322 U. S. at 67):

> Inexcusable detention for the purpose of illegally extracting evidence from an accused, and the successful extraction of such inculpatory statements by continuous questioning for many hours under psychological pressure, were the decisive features in the *McNabb* case which led us to rule that a conviction on such evidence could not stand.

On the basis of this sentence, the court below has taken the view, articulated in several decisions by that court, that the real evil at which the *McNabb* decision was directed is the use of a period of illegal detention for the application of psychological pressure—akin to third degree methods although not amounting to actual coercion—by prolonged and continuous questioning. Thus, in *Akowskey* v. *United States*, 158 F. 2d 649 (App. D. C.), although the period of detention was much shorter than that involved here, and *per se* might not be deemed unreasonable, the court below held a confession inadmissible because the accused had been questioned continuously for a period of seven hours. In the absence of such aggravating circumstances, that court has held that confessions are

admissible even though made during a period of delayed arraignment. *Boone* v. *United States*, 164 F. 2d 102 (App. D. C.); *Alderman* v. *United States*, 165 F. 2d 622 (App. D. C.).[7] Psychological pressure, rather than delay, is regarded as the kind of wrongdoing which will justify application of the extraordinary sanction of excluding competent evidence.

If, as we believe, this is the true scope of the *McNabb* rule, then the confession in the present case was clearly admissible. Petitioner was questioned only intermittently for short periods during the time he was held, and the questioning was neither coercive nor oppressive in any degree. Although petitioner asserted that his confession was coerced, the officers' categorical denials convinced the jury that it was not—and those denials are convincing on the record. The complete candor of the officers' testimony is reflected by their open

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[7] Questions regarding the interpretation of the *McNabb* and *Mitchell* decisions have been largely confined to the District of Columbia. Except for cases immediately following the *McNabb* decision, where the confessions were obtained before that decision was announced (see cases cited in *United States* v. *Mitchell*, 322 U. S. at 68), there are few decisions in other circuits dealing with the *McNabb* rule, and none of them involve the problem here presented. In so far as other courts articulate at all their concept of the *McNabb* decision as interpreted in the *Mitchell* case, they lean strongly in the direction of the majority opinion in the court below. *United States* v. *Ebeling*, 146 F. 2d 254, 256 (C. C. A. 2); *Ruhl* v. *United States*, 148 F. 2d 173, 175-176 (C. C. A. 10); *Brady* v. *United States*, 148 F. 2d 394 (C. C. A. 9); *Chevillard* v. *United States*, 155 F. 2d 929, 935-936 (C. C. A. 9).

and frank admission of their purpose in holding petitioner. The voluntary character of petitioner's confession is confirmed by Mrs. Pearce's testimony that he was calm when he repeated the circumstances of the theft to her, and that he offered to repay her for the stolen watch. (R. 22-23, 26-27). None of the oppressive circumstances present in the *McNabb* case, which were emphasized by this Court in the *Mitchell* decision, were present here: there were no groups of officers questioning the accused person in relays, no protracted questioning by any one, no aspect of psychological pressure. If, as we believe, the real evil at which the *McNabb* rule is directed was the use of methods akin to the third degree, then assuredly there is no reason to exclude the confession here involved, because no such methods or practices were employed here.

The present confession would be inadmissible only if the view prevails that a delay in arraignment for the purpose of questioning constitutes in and of itself such wrongdoing on the part of the police as to require the outlawing of a voluntary confession on that ground alone. We do not believe that the *McNabb* rule requires any such result, and certainly it should not now be extended so far. As we have indicated above, almost all who have studied the problem agree that some questioning of persons accused of crime is both necessary and desirable under our system of law enforce-

ment.[*] True, the crime here involved is a petty one, but the principle that will now be adjudged will be as applicable to murder and kidnapping as to larceny of a watch. This case, it must be emphasized, involves a situation where, out of four possible suspects, three had been eliminated on preliminary investigation, and only the fourth, who had been asked to appear and had not done so, was held for questioning; it is a case, moreover, in which the questioning was conducted by a single officer for short periods under circumstances which were not oppressive in any way. Such conduct does not so far overstep the bounds of sturdy law enforcement as to require the exclusion of a confession which was manifestly voluntary.

This Court had occasion to say in *Nardone* v. *United States*, 308 U. S. 338, 340, that——

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[*] In this connection, it is interesting to note the comment in R. M. Jackson, *The Machinery of Justice in England* (1940), p. 141:

"It is doubtful whether the police could do their work efficiently if they did not develop practices for which there is no legal authority. For instance, when the police are enquiring into a case, they have no power to compel anyone to give them information; a witness may be compelled to attend a *trial* and there give evidence, but before proceedings are actually brought he can refuse to say a word. This is so inconvenient that police officers get their way by bluff or threats. If the police are to respect the law it will be necessary to redefine and probably enlarge their powers, but such a step would be fatal to the liberties of the ordinary citizen unless it were accompanied by a satisfactory method of challenging police actions. • • •"

For a discussion of English practice, see 53 Yale L. J. 758, 767-769.

> Any claim for the exclusion of evidence logically relevant in criminal prosecutions is heavily handicapped. It must be justified by an over-riding public policy expressed in the Constitution or the law of the land.

The circumstances under which petitioner's confession was made are not so oppressive as to contravene any overriding public policy. On the contrary, insofar as the situation involves a balancing of interests, the community's interest in pursuing and punishing crime perceptibly outweighs the interest of the voluntarily confessed criminal in escaping punishment. There is thus no reason to reject truthful and relevant evidence with the result that a person clearly guilty should go free.

CONCLUSION

The judgment below is correct and should be affirmed.

Respectfully submitted,

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